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Jury Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

12 CR 802 (KBF)

5 DAVID DELVA,

6 Defendant.

7 -----x

8 New York, N.Y.
9 September 10, 2014
9:00 a.m.

10 Before:

11 HON. KATHERINE B. FORREST,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

JUSTINA GERACI

17 RYAN POSCABLO

18 Assistant United States Attorney

19 JEFFREY PITTELL

Attorney for Defendant Delva

20
21 ALSO PRESENT: JOHN REYNOLDS, Special Agent FBI
22 ANNIE CHEN, Paralegal Specialist, U.S. Attorney's Office

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1 (Trial resumed; jury not present)

2 THE COURT: Good morning, everyone. Please, be
3 seated.

4 (Case called)

5 MS. GERACI: Good morning, your Honor.

6 Justina Geraci for the government and I am joined at
7 counsel table by Paralegal Specialist Annie Chen

8 THE COURT: All right. Good morning, both of you.

9 MS. GERACI: It feels a little lonely up here at
10 counsel table because AUSA Poscablo is with a witness.

11 MR. PITTELL: Good morning, judge.

12 Jeffrey Pittell appearing for Mr. Delva.

13 THE COURT: The Court notes that Mr. Delva is here.

14 We have got a couple of housekeeping issues to go over
15 today before we start. I've also got the jury charges which
16 will be hand to you at a break. As indicated, we'll start with
17 those tomorrow morning and I've got a couple things that if we
18 have time I'll mention about the charges before we have the
19 jury come in if we have time.

20 Today, I understand that Mr. James is going
21 potentially to testify; is that right?

22 MS. GERACI: Yes, your Honor.

23 THE COURT: And that there was a question about
24 whether or not in terms of immunity how we should handle it.
25 Here is what I would propose we do. The requirement is that he

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1 say under oath that he would take the Fifth unless he was
2 provided immunity. I don't see any particular reason to have
3 to have him do that outside the presence of the jury since I'll
4 have signed an immunity agreement beforehand if I haven't
5 already. I know I signed one for him. I can't remember if it
6 was only for the Fatico hearing or two for him. But what I
7 would propose when you are calling him as you are going to have
8 to explain the immunity agreement and simply ask him, is it the
9 case, are you testifying here or however you are going to
10 approach it in a non leading way. Agreement, yes, this
11 immunity thing was it would you testify without being granted
12 immunity? No, I take the fifth. Or some other way. I don't
13 care how word the question. That was not very artful. I have
14 to have my coffee which is right here but do you understand
15 what I am saying?

16 MS. GERACI: I do, your Honor.

17 THE COURT: Does anybody think that I need to take him
18 outside of the presence of the jury given that we know he is
19 going to take it, he would take the Fifth unless he had
20 immunity given his background?

21 MS. GERACI: I think it's sounds fine, your Honor.
22 I'll just confer with Mr. Poscablo when he comes in but I see
23 your Honor's proposal and I don't think that would be a
24 problem.

25 THE COURT: Mr. Pittell, do you want me to do more?

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1 MR. PITTELL: Judge, this is my perspective. Having
2 represented people like Mr. James in the past they've always
3 followed my advice to assert the Fifth, I would say based on my
4 experience there is no need to do anything further. However,
5 there is one little quirk in this case. During
6 cross-examination at the, I guess it was the Fatico hearing,
7 one of the attorneys questioned him about his immunity and his
8 answer was, he was asking him whether or not he was coming up
9 here on his own or whether or not he needed immunity and I
10 think the answer was more along the lines, I would have been
11 willing to do it on my own. Then the attorney at that point
12 made an oral application to revoke his immunity. I mean, I
13 would just suggest so the record is clear that he at least
14 state on the witness stand what I expect he's going to state
15 that he's been advised and will follow that advice.

16 THE COURT: Let's just do that unless it comes
17 conveniently at a break if we are going to call him just as the
18 next witness and it's going to happen so there's not a logical
19 break. I am going to have you, Ms. Geraci, just do that
20 through your questioning of the witness. I don't perceive any
21 particular reason why that creates any dilemma that needs to be
22 taken outside of the presence of jury, nor do I think it's
23 particularly long and therefore will unduly delay things in
24 front of the jury. But if you disagree let me know.

25 MS. GERACI: That sounds reasonable, your Honor.

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1 THE COURT: What else is going to happen today? How
2 much time, Mr. Pittell, do you think you've got left?

3 MR. PITTELL: Very brief.

4 THE COURT: All right. So a little bit from you and
5 then how much on redirect, Ms. Geraci?

6 MS. GERACI: Your Honor, I would say about 10, 15
7 minutes.

8 THE COURT: All right. So somewhere ten-ish ten, 15
9 or so maybe sooner, we'll be into the next witness. Is that
10 Mr. James?

11 MS. GERACI: It will be someone else, your Honor. It
12 will be either Eric Perry who will testify as to the cell sites
13 in this case or Diana Cooke who is the DNA expert. The only
14 reason I say it will be either of them is because Special Agent
15 Perry is testifying before another judge this morning. If he
16 available and free he will come here. If not we intend to call
17 Diana Cooke.

18 THE COURT: All right. My guess is it's going to be
19 Cooke because if he's testifying before another judge, are they
20 starting at ten?

21 MS. GERACI: I think they're starting the ten.

22 THE COURT: So I bet he'll just be on the stand in
23 that other proceeding. So either of Cooke or Perry, then
24 Mr. James or someone else.

25 MS. GERACI: It'll be either Cooke or Perry and then

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1 the other. So one of the two and then after that we intend to
2 call Jeanette Adams and then Patrick James.

3 THE COURT: I see. So that's the order for today.

4 All right. In terms of other open items we had the
5 open item relating to the information, that document which,
6 Mr. Pittell, you had offered yesterday so that you could have a
7 relatively straightforward way of referring to what
8 Mr. Accilien had pled guilty to the first time and what he had
9 pled guilty to the second time. I had asked you folks to go
10 off and think about if there is some way to do that other than
11 having the information introduced. I don't feel particularly
12 strongly about this because I do think now having reflected
13 upon it that I can talk about how the information here can be
14 taken as true is what I would do. In order to distinguish it
15 from the indictment I think I need to do something like this
16 because he pled guilty to the information twice. But I would
17 want to if we're going introduce it make sure that I give a
18 distinction between the information that he pled guilty to and
19 the indictment which is simply a charge against the defendant.

20 So have you folks reflected as to how you want to
21 proceed with that?

22 MR. PITTELL: I've reflected but we haven't discussed.

23 THE COURT: All right. So I am not going to raise it
24 again sua sponte. You folks can raise it with me.

25 Next, I just wanted to make sure I didn't have an open

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1 item that I --

2 MR. PITTELL: Can I just take a moment to confer?

3 THE COURT: Sure.

4 (Pause)

5 THE COURT: It sounds like you have a solution. I
6 assume you'll be able to work that out. Seeing you folks it
7 sounds like you are starting to work out language. If you are,
8 then I assume you are going to get there. So you folks will
9 work that out and then present a stipulation if and when you
10 see fit.

11 In terms of other things, I wanted to encourage you
12 folks when you were reviewing the transcript in this matter to
13 raise with me anything which you think we need to revisit
14 either we've left it as an open item and you were going to take
15 on the responsibility of bringing it back to me or if I had
16 said I'll think about X, Y or Z and I haven't gotten back to
17 you and you still want a determination on whatever the open
18 question is, I am now lobbing the tennis ball back over the net
19 into your court because I have completed all the open items
20 that I know that I have which means if there are any, it is an
21 oversight.

22 And the next item is in terms of jury instructions, I
23 have put in an alibi instruction. I think that there is, it's
24 an appropriate defense instruction, although I've changed the
25 wording and you'll see that, Mr. Pittell, just slightly sort of

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1 tightening it up a little bit and not have in that instruction
2 anything that really talks specifically about the type of proof
3 in this case because we don't do that elsewhere but we'll talk
4 about there was evidence of and you'll see the charge. But the
5 government should look at that because it was not, they had not
6 edited that charge in the version that I got.

7 In terms of investigative techniques not required,
8 that's not currently in because it hasn't come up but if you
9 folks need that, let me know and remind me and we'll put it
10 back in.

11 We do have the use of evidence pursuant to a search
12 and also improper considerations based upon race, religion,
13 etc. But how about similar act evidence? Do we need similar
14 act evidence? Is that likely?

15 MR. POSCABLO: Judge, I was looking at our motions in
16 limine and your Honor's draft opinion and truly the only one
17 that we were seeking to introduce was a statement by
18 Mr. Accilien that he attributes to the defendant where he says
19 two things. One, he was chosen for this robbery because he had
20 done robberies in the past and that statement if you recall
21 where he says, this is not the kind of robbery I do.

22 THE COURT: One instance of which was in and a second
23 version of it which was precluded in the nature of the second
24 version.

25 MR. POSCABLO: Other than that, we're not going to be

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1 offering any other 404(b) evidence. We are not going to call
2 any witnesses to testify about the other incident.

3 THE COURT: All right. So, Mr. Pittell, if you think
4 that we need a Similar Acts charge, I will include one, but I
5 think there's a call as to whether or not given what the state
6 of the record is right now, whether or not it draws undue
7 attention to these issues we're not -- let me know. When you
8 see the charges let me know.

9 MR. PITTELL: Yes, judge.

10 THE COURT: But you folks will get those charges this
11 morning and that will be that.

12 Anything you folks want to raise with me?

13 MR. POSCABLO: Your Honor, after Mr. Accilien's
14 completed with his testimony we plan on calling former
15 Criminalist Diane Cooke. We are going to be producing four of
16 her expert reports which are labeled 1000 through 1003.

17 THE COURT: Let me ask you in terms of introducing the
18 report, why would you introduce the report which is itself -- I
19 have not seen the report but most reports are hearsay. It's
20 simply a recitation of her opinions and it is for disclosure
21 purposes to the defendant. I don't know that there's a reason
22 why you need to introduce them. If there are exhibits, charts,
23 data that she needs to refer to in there, that's fine. If it's
24 simply for her to be able to review on the stand, that's fine.
25 But does it need to come in as evidence?

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1 MR. POSCABLO: Judge, from my experience with DNA
2 experts and their reports, nine times out of ten they will look
3 at that report throughout their entire testimony.

4 THE COURT: That's OK.

5 MR. POSCABLO: But they are business records and
6 that's the hearsay exception to why they're admissible.
7 They're kept in the ordinary course --

8 THE COURT: So she would have created this report?

9 MR. POSCABLO: That's correct.

10 THE COURT: So it's not much of a report -- well, it's
11 a report but it's not a report created for purposes of this
12 matter; is that correct?

13 MR. POSCABLO: That's correct.

14 THE COURT: This trial proceeding?

15 MR. POSCABLO: That's right. In fact, those reports
16 are created before any case is brought.

17 THE COURT: All right. Why don't you lay then a
18 foundation for it --

19 MR. POSCABLO: OK.

20 THE COURT: -- and proceed that way. We'll see what
21 kind of foundation we get. But I hear what you are saying that
22 this is different from just an expert report created for
23 purposes of walking in here to testify.

24 MR. POSCABLO: So your Honor's clear and I think
25 Mr. Pittell knows this, the expert report is actually her

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1 analysis is really just one or two pages. The rest of it is
2 really the data and charts that she analyzed in order to come
3 up with the conclusions that are on the first two pages. But
4 really I raised it because we have a demonstrative which is up
5 there. It is a chart that was prepared and it's within one of
6 her reports. I think it's within 1003. I think it's like the
7 third or fourth page. And it is a chart that she will be
8 referring to a lot so we decided it is the one that we are
9 going to blow-up and essentially it shows --

10 THE COURT: They won't, of course, be able to see it
11 back there.

12 MR. POSCABLO: No. We will move it up. But it is
13 reflected in the government exhibits. We can put it up on the
14 screen as well but I was going to ask the Court that she be
15 able to step down and write on it with a marker to explain how
16 she drew the conclusion that Mr. Delva's DNA is on that.

17 THE COURT: That's fine. If she's writing on it with
18 a permanent marker then you'll want to reintroduce the second
19 version with the permanent marker as an exhibit lest we have
20 describe every place that she's made the mark so we need to
21 have it in the record.

22 MR. POSCABLO: Sure.

23 THE COURT: Mr. Pittell, have you seen those reports?
24 Do we anticipate any evidentiary issues that we need to explore
25 right now?

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1 MR. PITTELL: Yes, your Honor. Exhibit 1003 is really
2 the entire file from the medical examiner's office. It
3 includes documents which are not prepared by them such as
4 police reports. It also includes --

5 THE COURT: I didn't see an objection on your list. I
6 saw pending under chart for call and pending under Delva DNA
7 report.

8 MR. PITTELL: There should be a 103 objection for
9 that.

10 THE COURT: All right. I'll take your word for it
11 that you've got a more recent objection I don't have but my
12 version doesn't have any objections for most of them, but go
13 ahead.

14 MR. PITTELL: Also, the report after the second page
15 has an appendix which is several pages which is the medical
16 examiner's definition and terms of items. I don't think that
17 that should be included.

18 THE COURT: Why shouldn't it be included?

19 MR. PITTELL: Well, because it's --

20 THE COURT: If there are terms which are utilized in
21 the interpretation of report --

22 MR. PITTELL: Yes.

23 THE COURT: -- then I would it would -- why would we
24 want to excise them? What theory?

25 MR. PITTELL: Because this is the opinion of the

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1 officer of the medical examiner's office as to what these words
2 mean. There may not necessarily be a universal agreed upon
3 definition of these terms.

4 THE COURT: Well, you can cross-examine her on that.
5 Presumably, we are going to have her -- does she need to be
6 qualified as an expert?

7 MR. POSCABLO: Yes, your Honor.

8 THE COURT: I'll by the way just throw it in now, give
9 the jury sort of an instruction as to how to consider the
10 testimony of an expert but also that they should weigh it as
11 they would the testimony of any other witness. But if she's
12 going to be -- if she agrees that those terms are terms that
13 she uses and she uses them according to those definitions and
14 otherwise qualified as an expert and they're otherwise useful
15 to the jury in terms of understanding her opinion, they do seem
16 to fit within the boundaries of what would be in 702. Indeed,
17 under 701 if she were considered to be not a pure expert but a
18 layperson expert, so either way.

19 MR. PITTELL: My concern is it just appears to have
20 the appearance of learned treatise and there is no source of
21 authority for this information in here.

22 THE COURT: You can certainly cross-examine her on
23 that whether she knows whether these are standard and accepted
24 definitions, etc.

25 MR. PITTELL: Another objection I have is that as

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1 Mr. Poscablo indicated that the file includes analysis and
2 testing but some of this analysis and testing was done by
3 people other than her.

4 THE COURT: Well, he'll need to lay a foundation for
5 that as being under her supervision and control but otherwise
6 it wouldn't be unusual if she supervised them controlled them,
7 knew their methodology and you know depends on the nature --

8 MR. PITTELL: I don't think she supervised them. I
9 don't think she was present or supervised every analyst who
10 participated in every step of the analysis. I think it's
11 several analysts that it was kind of passed along with one
12 analyst to the other, back to another one. And so you have one
13 analyst doing one part of the analysis. She's not present in
14 the room. She doesn't supervise. We have no way of knowing
15 whether or not that analyst followed all protocols, did
16 everything properly.

17 THE COURT: Let me ask you, I want to separate out
18 right now what would have been an in limine Daubert motion to
19 preclude the witness and issues relating to Daubert whether her
20 methodology is an adequate methodology from a current issue
21 over the admissibility of the reports. That last statement
22 sounded more like a Daubert type motion to preclude certain
23 testimony. At this point I'll let Mr. Poscablo lay a
24 foundation but I am not going to if he lays an appropriate
25 foundation right now on the fly do a separate Daubert analysis

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1 but is this a report driven --

2 MR. PITTELL: Judge, I mean I don't know if it's a
3 Daubert issue because I am not necessarily contesting the
4 science. It's just the actual testing itself. And in the
5 disclosure the government disclosed CVs of other analysts and I
6 was begin the impression that whatever other analysts were
7 involved were going to verify their results in their findings.

8 THE COURT: Mr. Poscablo, not having read these
9 reports I don't know what the language is but tell me how this
10 medical person is going to testify.

11 MR. POSCABLO: Yes, your Honor. First, let's be clear
12 about something. Diana Cooke we've provided Diana Cooke's
13 curriculum vitae. Her CV was part of her 3500. Mr. Pittell
14 asked for additional Rule 16 discovery with regard to the
15 accreditation process of the OCME and we provided him with that
16 information with contained and CCs of several of her
17 supervisors. The testimony will show that once a case is
18 assigned to a particular criminologist, that criminologist has
19 her hand in almost every step of the process. She's not doing
20 every testing. She will do one particular part. But after a
21 particular, for example your Honor, there's several steps.
22 First, there's extraction, then quantitation, then several
23 other steps after that. She won't do every step but after the
24 extraction step is done she will review what was done so it
25 becomes her case.

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1 THE COURT: Is there a consistent methodology used
2 there for those steps?

3 MR. POSCABLO: Absolutely. And she can testify to
4 that.

5 THE COURT: She should.

6 MR. POSCABLO: And he she will. So I don't actually
7 understand Mr. Pittell's objection with regard to the report.

8 THE COURT: Let me see an exemplar so that we can
9 eliminate any issues with respect to the report. I will allow
10 the witness to testify and to testify as to her opinions.
11 Certainly, her testimony is directly relevant. She appears to
12 have the necessary qualifications but I'll let you develop that
13 on direct-examination with her. And based upon that proffer as
14 to how this is done then I think she will have an adequate
15 basis. However, the report's another matter, at least portions
16 of the report which may have text let me just see those or at
17 least one exemplar and we'll take it from there.

18 Joe, do we have a jury?

19 COURTROOM DEPUTY: We're waiting on two more.

20 THE COURT: What numbers?

21 COURTROOM DEPUTY: Four an 12.

22 MR. POSCABLO: Just before I hand this to your deputy,
23 Mr. Pittell is correct about one thing and I've removed those.
24 The full file is what we were offering as 1003 included the
25 certification, our letter requesting certified copy and there

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1 are some police reports and property invoices in here. I've
2 removed those and I will hand them separately to your deputy in
3 order to show the Court which we intend to offer and what we
4 are willing to take out.

5 THE COURT: All right. Mr. Pittell knows what you are
6 willing to take out?

7 MR. POSCABLO: I will show him, yes.

8 (Pause)

9 THE COURT: Is this document, this laboratory report,
10 is that what you are calling her expert report?

11 MR. POSCABLO: Yes, your Honor.

12 THE COURT: And it's your proffer, Mr. Poscablo, that
13 this document would be created once the Office of the Chief
14 Medical Examiner is asked to perform the kind of testing that
15 was requested and irrespective of whether or not that
16 individual doing the testing was going to be testifying at
17 trial?

18 MR. POSCABLO: Yes, your Honor.

19 THE COURT: As the morning goes on my sentences won't
20 be as poorly constructed as they are right now.

21 MR. POSCABLO: And neither will my answers.

22 THE COURT: Your answers are fine.

23 All right. This document which has been handed to me
24 to review which is Government Exhibit 1003 and it does not have
25 the pages which Mr. Poscablo had indicated as materials he's

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1 willing to take out, do appear to be business records of the
2 Office of the Chief Medical Examiner. I will let Mr. Poscablo
3 lay a foundation for those. You need to do it. I am not going
4 to admit them now. You need to do it with the witness on the
5 stand and we'll see if she says anything surprising but
6 otherwise I would expect that these would come in

7 MR. POSCABLO: Thank you, your Honor.

8 THE COURT: All right. I'll hand this back to you,
9 both the materials you said you were taking out and also the
10 exhibit itself.

11 Anything further we should go over this morning?

12 All right. OK. We're ready. Let's get Mr. Accilien
13 out on the stand.

14 (Witness present)

15 THE COURT: All right. Joe, bring out the jury.

16 (Jury present)

17 THE COURT: All right. Ladies and gentlemen, let's
18 all be seated. I see from at lease some of cups in your hands
19 the coffee arrived. Were there not tops? No tops. Let's see
20 if we can get tops from the cafeteria.

21 Mr. Pittell, you may proceed.

22 CONTINUED CROSS-EXAMINATION

23 BY MR. PITTELL:

24 Q. Good morning, Mr. Accilien.

25 A. Good morning.

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Accilien - Cross

1 Q. Mr. Accilien, I just want to ask you a couple follow-up
2 questions about the day you were arrested on June 14, 2013.

3 A. Yes.

4 Q. When you were arrested, was there a woman and some children
5 living in your apartment on South Oak Drive?

6 A. Yes.

7 Q. And what was the name of the woman that was there?

8 A. Zaleka Witter.

9 Q. Does she have a nickname?

10 A. Leka.

11 Q. That the same Leka whose name was in the handwritten
12 letters that we were looking at up on the screen yesterday?

13 A. Yes.

14 Q. The Leka who is the mother of the children of, with her and
15 Dominique Jean-Philippe?

16 A. Yes.

17 Q. And were how many children were in the apartment?

18 A. Two children.

19 Q. And were they children of her and Dominique?

20 A. Yes.

21 Q. And they were -- so Zaleka and two children were sleeping
22 in the living room?

23 A. Yes.

24 Q. And now, when the police came and arrested you they did, at
25 some point they ask for permission from you to search the

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Accilien - Cross

1 apartment?

2 MS. GERACI: Objection, your Honor.

3 THE COURT: Sustained.

4 Q. Did you give the police permission to search the apartment?

5 MS. GERACI: Objection, your Honor.

6 THE COURT: Yeah, I don't know why this is relevant.

7 The search is -- ladies and gentlemen, the search, the
8 obtaining of evidence in this matter has been deemed legal so I
9 don't think there's --

10 MR. PITTELL: Laying the issue --

11 THE COURT: It's not relating to that. All right.
12 Try a few more. We understand each other in terms of what's
13 already resolved but you can go ahead if you've got something
14 else.

15 MR. PITTELL: You can answer the question.

16 THE COURT: Why don't we have the court reporter read
17 that back because I interrupted it.

18 (Read back)

19 A. No.

20 THE COURT: Let me just say that just because of that
21 answer I just want, ladies and gentlemen, for you folks to
22 understand that the law of searches is very complicated and the
23 law of searches that are incident to an arrest is very
24 complicated and we have analyzed in this particular case and
25 searches here were perfectly legal and that's already been

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Accilien - Cross

1 determined. So the answer's being offered for another purpose
2 and you must assume that the search was perfectly legal and all
3 evidence obtained pursuant to that search. Thank you.

4 You may proceed.

5 BY MR. PITTELL:

6 Q. But at some point you gave permission to search the
7 bedroom?

8 A. No, I never did.

9 Q. And the bedroom you shared with David Delva?

10 A. I wasn't -- I was living in the living room at one point
11 but I decided to move in David's room the night before I got
12 arrested.

13 Q. Right. So as of the day that you got arrested you were
14 sharing a bedroom with David Delva?

15 A. Yes.

16 Q. Now, you had indicated that at some point in sometime you
17 sold drugs with your brother, Dominique; is that correct?

18 A. Yes.

19 Q. That is at some point in time while you were living in your
20 residence at South Oak Drive; is that correct?

21 A. Yes.

22 Q. And sometimes your brother would bring drugs over to your
23 house?

24 A. Yes.

25 Q. And sometimes he would break up and put them on a scale and

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Accilien - Cross

1 break them up and put them in little packages in your house?

2 A. Yes.

3 MR. PITTELL: Judge, I have no further questions of
4 this witness.

5 THE COURT: All right. Ms. Geraci.

6 MS. GERACI: Thank you, your Honor.

7 REDIRECT EXAMINATION

8 BY MS. GERACI:

9 Q. Mr. Accilien you were examined at length yesterday about
10 your schizophrenia; do you remember that?

11 A. Repeat that again.

12 THE COURT: I am going to ask you to slow down so the
13 court reporter can get a clear record.

14 MS. GERACI: Sorry.

15 Q. You were examined at length yesterday about your
16 schizophrenia; do you remember that?

17 A. Yes.

18 Q. You were examined at length yesterday about the medical
19 attention and the treatment you received for your
20 schizophrenia; do you remember that?

21 A. Yes.

22 Q. You have been living with this mental illness for many
23 years; is that right?

24 A. Yes.

25 Q. Yesterday you were asked about auditory hallucinations; do

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Accilien - Redirect

1 you remember that?

2 A. Yes.

3 Q. Do you know what auditory hallucinations are?

4 A. Voices.

5 Q. Can you tell when someone is actually speaking versus when
6 you hear voices in your head?

7 A. Yes, I could tell the difference.

8 Q. Can you tell the difference if a voice in your head is
9 telling you to do something versus when a real person is
10 telling you to do something?

11 MR. PITTELL: Objection.

12 A. Yes.

13 THE COURT: Overruled.

14 Q. Can you tell the difference if a voice in your head is
15 yelling or cursing at you versus when a real person is yelling
16 or cursing at you?

17 A. Yes, I could tell the difference.

18 Q. You were also asked about visual hallucinations; do you
19 remember?

20 A. Yes.

21 Q. Can you tell the difference when you see something real
22 versus when you are hallucinating?

23 A. Yes.

24 Q. Mr. Accilien, you testified that you were asked by your
25 brother, Dominique, to bring David Delva to the crime scene; do

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Accilien - Redirect

1 you remember the testimony?

2 A. Excuse me.

3 Q. Do you remember that you testified that you were asked by
4 your brother, Dominique, to bring David Delva to the crime
5 scene?

6 A. Yes.

7 Q. Do you have an understanding as to why you were asked to do
8 that?

9 MR. PITTELL: Objection.

10 THE COURT: Sustained. You'd have to rephrase.

11 Q. What was your belief --

12 MR. PITTELL: Objection.

13 THE COURT: Sustained.

14 Q. Why did you bring David Delva to the crime scene?

15 MR. PITTELL: Objection.

16 THE COURT: Overruled.

17 A. Because David had more experience than me --

18 Q. What does that mean?

19 MR. PITTELL: Judge, note the objection to the beyond
20 the scope.

21 THE COURT: Overruled. I'm sorry. I missed the last
22 question. Do you want that reread?

23 MS. GERACI: Yes, your Honor, please.

24 THE COURT: So, why don't we have the court reporter
25 read back the prior question and answer and the answer to the

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Accilien - Redirect

1 last question.

2 (Testimony read back)

3 Q. What do you mean when you say he had more experience than
4 you?

5 A. That's what he was doing before and I guess they was more
6 comfortable --

7 MR. PITTELL: Objection.

8 THE COURT: Overruled.

9 Ladies and gentlemen, I want you to understand that
10 the defendant here is not on trial for any of his past history
11 or any assumptions about past history. We don't have any proof
12 or evidence in this case as to what his past history is or was
13 and that's not what this trial about. This trial is about the
14 charges in the indictment. The testimony of the witness is
15 simply offered for his state of mind. So it's offered for a
16 purpose other than to show some sort of propensity to do
17 something.

18 You may proceed.

19 MS. GERACI: Could I just get the last answer read
20 back?

21 THE COURT: All right. Yes.

22 (Testimony read back)

23 Q. Mr. Accilien, what was he doing before that you thought he
24 was more comfortable?

25 A. He was doing robberies before.

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Accilien - Redirect

1 Q. Mr. Accilien, you were questioned excessively by
2 Mr. Pittell about lies you told the government; do you recall
3 that?

4 A. Yes.

5 Q. And when you got arrested the very first time you got
6 arrested you didn't tell the FBI right away about David Delva's
7 involvement in the robbery and kidnapping; is that right?

8 A. Yes.

9 Q. But when you met with the government you still minimized
10 both your conduct and his; is that right?

11 A. Yes.

12 Q. But at some point you got the story straight, didn't you?

13 A. Yes.

14 Q. That means you told the truth about your involvement and
15 his; is that right?

16 MR. PITTELL: Objection.

17 A. Yes.

18 THE COURT: Hold on. Let me just also read that.
19 I'll allow it. Overruled. No, it was answered.

20 MR. PITTELL: Objection is also to form.

21 BY MS. GERACI:

22 Q. Mr. Accilien, when you first pled guilty you pled guilty to
23 a number of crimes, right?

24 A. Yes.

25 Q. You pled guilty to conspiracy to rob, to robbery,

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Accilien - Redirect

1 kidnapping, conspiracy to kidnap and the use of a firearm; is
2 that right?

3 A. Yes.

4 Q. And then you had to plead guilty again; is that right?

5 A. Yes.

6 Q. And the additional crimes to which you pled guilty were a
7 narcotics conspiracy for drugs and also to lying; is that
8 right?

9 A. Yes.

10 Q. Did you suffer the consequences for that?

11 A. I sure did.

12 Q. Did your mandatory minimum sentence go up because of your
13 second plea?

14 A. Yes.

15 Q. Did you lie at any point during your testimony in court on
16 Monday?

17 A. Repeat that again, please.

18 Q. Did you lie at any point during your testimony to this
19 court on Monday?

20 A. No.

21 Q. Did you lie at any point during your testimony on Monday?

22 A. No.

23 Q. Are you lying today?

24 A. No.

25 Q. Mr. Accilien, you were shown a series of phone contacts

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Accilien - Redirect

1 yesterday that were from the defendant's cellphone; do you
2 remember that?

3 A. Repeat that again.

4 Q. Sure. You were shown a series of phone contacts yesterday?

5 A. Yes.

6 Q. Do you remember that?

7 A. Yes.

8 Q. OK. And your testimony was that the phone, the one with
9 the 305 area code is David Delva's phone; is that right?

10 A. Yes.

11 Q. During the time of the robbery in September of 2012, did
12 you testify that the only time you used this phone was when you
13 were with the defendant at the crime scene?

14 A. Yes.

15 Q. You would call David Delva on this phone, right?

16 A. Would I call him? Yes.

17 Q. On the 305 phone, would you call him on that number?

18 A. Yes, I called him.

19 Q. You in fact called him on that phone while you were at home
20 and he was at the crime scene; is that right?

21 MR. PITTELL: Objection.

22 A. Yes.

23 THE COURT: Overruled.

24 MS. GERACI: With the Court's permission can I ask
25 Ms. Chen to put up Government Exhibit 2000-Z. It's already in

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Accilien - Redirect

1 evidence. And focus on entry 71 and 72 which should be on page
2 nine.

3 (Pause)

4 Q. Mr. Accilien, are those both you --

5 A. Yes.

6 Q. And would David Delva call you from this phone,
7 Mr. Accilien?

8 A. Yes.

9 MS. GERACI: Judge, just for the record you are
10 looking at phone contact 71 and 72 and it's indicates that it's
11 Greg from 917 number and Greg house, the 347 number.

12 THE COURT: All right. Thank you.

13 Q. Mr. Accilien, did you ever take pictures with David's
14 cellphone?

15 A. No.

16 Q. Did some of your friends also know David Delva?

17 A. Yes.

18 Q. In fact, you introduced people to David Delva, right?

19 A. Yes.

20 Q. You testified yesterday that you sold crack to a person
21 listed in that phone as "Harris"; is that right?

22 A. Yes.

23 Q. Where did you get the crack you sold to Harris?

24 A. From David.

25 Q. Do you recall a contact "Wayne" that you testified about

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Accilien - Redirect

1 yesterday as your next door neighbor?

2 A. Yes.

3 Q. He's David's next door neighbor too, right?

4 A. Yes.

5 Q. Mr. Accilien, you testified previously that Trevor Cole and
6 Dominique Jean-Philippe were arrested for the September 2012
7 robbery and kidnapping, right?

8 A. Yes.

9 Q. And that you were arrested after them for the same crimes;
10 is that right?

11 A. Yes.

12 Q. And do you know whether Lisa Hylton was arrested before or
13 after you or at all?

14 A. Yes. She was arrested before me.

15 Q. You began to proffer with the government about a month
16 after you were arrested; is that right?

17 A. Yes.

18 Q. At the time you began to cooperate do you know whether
19 Trevor Cole, Dominique Jean-Philippe or Lisa Hylton were
20 prepared to go to trial?

21 MR. PITTELL: Objection.

22 THE COURT: Hold on. Let me just read this. I'll
23 allow it. You may answer.

24 A. Can you rephrase that?

25 Q. Sure. At the time you began to cooperate do you know

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Accilien - Redirect

1 whether Trevor Cole Dominique, Jean-Philippe or Lisa Hylton
2 were prepared to go to trial?

3 A. Did I know?

4 Q. Did you know?

5 A. No.

6 Q. In fact, you met with the government a lot during that
7 period; do you remember that?

8 A. Yes.

9 Q. Mr. Accilien, you were asked a series of questions
10 yesterday about the West Indian Day parade; do you remember
11 that?

12 A. Yes.

13 Q. I'm going to direct your attention to September of 2012,
14 were you at that parade in September of 2012?

15 A. No.

16 Q. Was Trevor Cole at that parade in September of 2012?

17 A. No.

18 Q. Was Dominique Jean-Philippe in September of 2012?

19 A. No.

20 Q. Was David Delva at that parade in September of 2012?

21 A. No.

22 Q. Why?

23 A. Because they were at the robbery scene.

24 Q. Mr. Accilien, you can tell the difference between a reality
25 and delusion; is that correct?

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Accilien - Redirect

1 A. Yes.

2 Q. Do you have any doubt in your mind as you sit here today
3 that the robbery and kidnapping actually happened in September
4 of 2012; do you have any doubt?

5 A. Yes.

6 Q. You have a doubt or you don't have a doubt?

7 A. No, no, I don't have a doubt.

8 Q. Do you have any doubt in your mind that you saw guns during
9 that robbery and kidnapping?

10 A. No, I don't have any doubt.

11 Q. Do you have any doubt that you saw a female tied up on the
12 floor during that robbery and kidnapping?

13 A. No, I don't have any doubt.

14 Q. Do you have any doubt that Trevor Cole participated in that
15 robbery and kidnapping?

16 A. I don't have any doubt.

17 Q. Do you have any doubt that Dominique Jean-Philippe
18 participated in that robbery and kidnapping?

19 A. No.

20 Q. Do you have any doubt that David Delva participated in that
21 robbery and kidnapping?

22 A. I don't have any doubt.

23 Q. Do you have any doubt that David Delva hit the male victim?

24 A. I don't have any doubt.

25 MS. GERACI: Thank you, your Honor.

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Accilien - Redirect

1 THE COURT: All right. Thank you.

2 Mr. Pittell, anything further?

3 MR. PITTELL: No, your Honor.

4 THE COURT: All right. Thank you.

5 Mr. Accilien, you may step down, sir.

6 All right. Would the government call its next
7 witness.

8 MR. POSCABLO: Yes, your Honor. The government calls
9 Diana Cooke.

10 THE COURT: All right. Ms. Cooke to the stand,
11 please.

12 (Continued on next page)

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E9a1del2

Cooke - direct

1 DIANA COOKE,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. POSCABLO:

6 Q. Good morning again, Ms. Cooke.

7 A. Good morning.

8 Q. Where do you currently work?

9 A. The Orentreich Foundation for the Advancement of Science.

10 Q. How long have you worked there?

11 A. About a week and a half.

12 Q. And where did you work prior to that?

13 A. The New York City Office of the Chief Medical Examiner.

14 Q. And how long did you work at the OCME prior to leaving
15 there?

16 A. Seven and a half years.

17 Q. Is that a New York City agency?

18 A. Yes, it is.

19 Q. And is the OCME a part of the New York City Police
20 Department?

21 A. No, it is not.

22 Q. Now can you tell the jury generally what the Office of the
23 Chief Medical Examiner does, generally.

24 A. They do autopsies, toxicology, anthropology, and the
25 forensic biology unit does testing on criminal evidence for the

E9aldel2

Cooke - direct

1 presence of biological fluids.

2 Q. Now were you in a particular department in the OCME?

3 A. Yes, I was.

4 Q. What department was that?

5 A. The department of forensic biology.

6 Q. Can you tell the jury a little bit about what the
7 department of forensic biology does.

8 A. We receive physical evidence from criminal cases in New
9 York City, we examine this evidence for the presence of
10 biological fluids, such as blood, semen, saliva, or the
11 presence of skin cells, we submit these samples for further
12 testing, analyze the results, write reports, and testify when
13 necessary in court.

14 Q. Now what position did you have right before you left? What
15 was your position?

16 A. I was a criminalist level 2.

17 Q. And how long had you been a criminalist level 2 at the
18 OCME?

19 A. About five years.

20 Q. What was your title before that?

21 A. I was a criminalist level 1B.

22 Q. Now I want to ask a few questions about your background, in
23 particular about your educational background as it relates to
24 forensic science. Did you go to college?

25 A. Yes, I did.

E9a1del2

Cooke - direct

1 Q. Where did you go?

2 A. I went to the University of Binghamton and got my
3 bachelor's of science in cell molecular biology, and I went to
4 the University of Albany and got my master's of science in
5 forensic molecular biology.

6 Q. And after graduating from Albany where did you go?

7 A. I went to the Office of the Chief Medical Examiner.

8 Q. And you were there for seven and a half years, before you
9 left.

10 A. That's correct.

11 Q. Why did you change jobs?

12 A. The commute was much shorter.

13 Q. Now can you describe for the jury some of the training that
14 you received specific to the DNA testing that you did about a
15 week and a half ago.

16 A. When I first started at the Office of the Chief Medical
17 Examiner, or OCME, we went through a six-month intensive
18 training program in which each test that we performed in the
19 lab, we first watched a trained analyst perform this test, a
20 trained analyst then watches us perform the test. We then
21 perform the test independently. Lastly, we do a competency
22 test in which the results are unknown to us but known to a
23 supervisor, and we must pass all these competency tests to
24 perform this testing in the lab.

25 Q. And did you participate in ongoing education throughout

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Cooke - direct

1 your time at the OCME?

2 A. That's correct.

3 Q. What sort?

4 A. We attend lectures that are at the OCME in continuing
5 education, we can go to conferences, and we also read current
6 journal articles in forensic science.

7 Q. Now speaking more generally, does the Office of the Chief
8 Medical Examiner have to undergo any special accreditation?

9 A. Yes, we do.

10 Q. Can you describe what that means. What is accreditation
11 and what's the process for getting accredited?

12 A. Accreditation means that we meet or exceed the national
13 standards put forth for DNA testing, so we perform quality work
14 on a day-to-day basis. In order to be accredited, we must
15 go -- undergo an inspection, which is done by the accrediting
16 agency, so they look at our office from top to bottom, so all
17 our procedures, the personnel, everything that -- our security,
18 everything that we do in the lab, and they must meet or exceed
19 the standards put forth by this testing. Our lab is accredited
20 by ASCLD/LAB, which stands for American Society of Crime
21 Laboratory Directors/Lab Accreditation Board, and it's the
22 international accreditation. And we're also accredited by the
23 New York State Commission on Forensic Science.

24 Q. Now after you're accredited, is there any auditing that
25 takes place of the OCME?

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Cooke - direct

1 A. Yes. Every year our office is audited, and every five
2 years we must undergo an inspection again to maintain our
3 accreditation.

4 Q. And at the time that you left was the OCME in compliance
5 with all accrediting agencies?

6 A. Yes, we were.

7 Q. What about with all audits?

8 A. Yes, we were.

9 Q. Now in addition to the general audits and examinations of
10 the lab, did you personally undergo evaluations during your
11 time there?

12 A. Yes, I did.

13 Q. How often?

14 A. Every six months analysts must undergo a proficiency test
15 in which an external agency provides a proficiency test, and
16 every test that we perform in the lab, we must perform on this
17 proficiency test, and then we must write up the results and
18 submit it to the external agency and then they would deem us if
19 we passed or failed the proficiency test.

20 Q. Now at the time that you left, were you in compliance with
21 all of your professional obligations?

22 A. Yes, I was.

23 Q. And you testified earlier that you were a level 2
24 criminalist before you left the OCME, is that correct?

25 A. That's correct.

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Cooke - direct

1 Q. What does it mean to be a level 2?

2 A. As a level 2 criminalist, I would examine the evidence,
3 submit -- for biological fluids, submit these samples for
4 further testing, perform all the tests done in the lab, I would
5 then write up -- analyze the results, write reports, and
6 testify when necessary in court.

7 Q. Those are all your responsibilities as a level 2.

8 A. That's correct.

9 Q. Now while you were there did the OCME lab use a rotation
10 system?

11 A. Yes, we did.

12 Q. What does that mean? Can you explain that to the jury.

13 A. The OCME lab deals with about 7,000 plus cases a year, so
14 in order to examine all these cases and perform the DNA testing
15 on these cases, we have a rotation system in which all the
16 analysts in the lab would be on a rotation and might handle
17 some or part of these cases.

18 Q. And for the DNA reports that you prepared, do you review
19 all of the work that underlies those reports?

20 A. Yes, I do.

21 Q. Let's talk about how many DNA case the lab handles. Do you
22 know approximately how many DNA cases the OCME handles each
23 year?

24 A. Approximately 7,000 plus cases a year.

25 Q. And in your seven and a half years at the OCME, how many

E9a1del2

Cooke - direct

1 DNA tests have you performed?

2 A. Thousands.

3 Q. And have you testified before in matters involving DNA?

4 A. Yes, I have.

5 Q. How many times?

6 A. About six or seven jury trials and about 30 or plus grand
7 juries.

8 Q. And in all of those times you were designated as an expert
9 witness?

10 A. Yes, I was.

11 MR. POSCABLO: Your Honor, the government offers
12 Ms. Cooke as an expert witness in the area of forensic DNA
13 analysis.

14 THE COURT: Mr. Pittell?

15 MR. PITTELL: No objection.

16 THE COURT: All right. The court does find that
17 Ms. Cooke is qualified as an expert witness in the area that
18 counsel have indicated in terms of forensic DNA analysis.

19 Ladies and gentlemen, we're now going to hear
20 testimony that Mr. Poscablo will work with Ms. Cooke on, and I
21 just want to give you a few instructions before you listen to
22 that testimony about expert witnesses.

23 Expert witnesses, which Ms. Cooke is qualified to be,
24 are qualified based upon their experience and knowledge in a
25 particular field. They have a particular kind of expertise.

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Cooke - direct

1 They're a little bit different from fact witnesses, or they're
2 a lot different because they don't have to have firsthand
3 knowledge of something. They have to have firsthand knowledge
4 if they're doing a test of something in particular, but it's
5 their expertise and knowledge that you're relying upon. So
6 they can give opinions. That's the big difference. They can
7 give an opinion, and a fact witness is there to testify only
8 about what he or she experienced directly. Now an expert
9 witness, as with any other witness, it's up to you to determine
10 what you believe and what you don't believe, and as with any
11 other witness, it is up to you to determine and assess
12 credibility.

13 All right. Mr. Poscablo, you may proceed.

14 MR. POSCABLO: Thank you, your Honor.

15 BY MR. POSCABLO:

16 Q. Ms. Cooke, what is DNA?

17 A. DNA is genetic material that contains information that
18 makes us human and also makes us unique. We receive half of
19 our DNA from our mom and half from our dad. About 99 percent
20 of our DNA is the same between you and me, so it's what makes
21 us human and gives us two eyes, a nose, and a mouth. About
22 1 percent of our DNA is unique, and this is the portion we look
23 at in our lab.

24 Q. Now what are some of the sources of DNA on the human body?

25 A. Our cells in our body, so skin cells, our white blood cells

E9aldel2

Cooke - direct

1 of our blood, sperm cells in semen.

2 Q. And what is the goal of DNA testing?

3 A. The goal of DNA testing is to determine, to -- once you
4 find DNA on criminal evidence, an attempt to identify from whom
5 these samples came from.

6 Q. And are you familiar with the term "locus" or "loci"?

7 A. Yes, I am.

8 Q. So let's spell "locus" first for the court reporter.

9 A. L-O-C-U-S.

10 Q. And "loci"?

11 A. L-O-C-I.

12 Q. And what is that? What are they?

13 A. These are locations that we test on the DNA.

14 Q. And what is an allele? And you can spell that too.

15 A. A-L-L-E-L-E. And this is a varied form of DNA at a
16 location, so for example, if you have blue eyes, you'll have
17 alleles for blue eyes.

18 Q. And what is a DNA profile?

19 A. A DNA profile is a result that we receive in our lab and
20 it's simply a string of numbers that's unique to an individual.
21 So we test 15 locations in our lab and a sex determining
22 location, and at each location an allele is represented by a
23 number. So we receive half of our DNA from our moms and half
24 from our dad, so we'll receive two numbers at each location.
25 So the result would be the string of numbers at all 15

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Cooke - direct

1 locations.

2 Q. And our DNA profile, is that unique for a particular
3 individual?

4 A. Yes, except for identical twins, who would have the same.

5 Q. If I had a twin, that person would have the same alleles in
6 the same loci as me.

7 A. An identical twin, yes.

8 Q. Identical twin, right. Now I'd like to talk about how the
9 lab goes about DNA testing generally. What types of materials
10 does the lab receive for testing?

11 A. So we receive physical evidence from a criminal case, so we
12 could receive a sexual assault kit, so those would be swabs or
13 underwear from a sexual assault; we'd receive evidence that's
14 left behind at a crime scene, so bottles, gloves, clothing, or
15 we could receive a swab that was taken of an item left behind
16 at a crime scene, and a swab is a -- looks like one end of a
17 Q-tip, and it's used to swab an item.

18 Q. Generally speaking, who performs the swab?

19 A. Evidence collection officer at the crime scene.

20 Q. Do you ever perform the swab?

21 A. If we receive evidence in a case, sometimes we'll swab that
22 evidence ourselves, but we don't swab -- normally swab items at
23 a crime scene.

24 Q. Ms. Cooke, can you explain to the jury what touch DNA is.
25 What is touch DNA?

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Cooke - direct

1 A. So there's something known as Locard's principle, and it
2 simply states that you --

3 Q. You need to spell that for the court reporter.

4 A. Locard, L-O-C-A-R-D. And it's a principle that states that
5 if a person comes into contact with a item, object, or a
6 person, that you're going to leave something behind on the
7 object and potentially take something back or -- that object,
8 or you're going to take something back from that object. So if
9 you touch an object, you can potentially leave behind skin
10 cells from your hand on that object.

11 Q. Is blood considered touch DNA?

12 A. It is not.

13 Q. Why?

14 A. Blood I guess is considered blood. Touch DNA is simply
15 from touching an object and leaving skin cells behind.

16 Q. So for blood, is semen considered touch DNA?

17 A. It is not.

18 Q. Okay. Now as an aside, can someone be present at the scene
19 of a crime and not leave behind DNA?

20 A. Yes, they can.

21 Q. What are some of the reasons a person may or may not leave
22 DNA on an object that he or she touches?

23 A. For example, you may be wearing gloves and not leave behind
24 your DNA, or sometimes when you touch an object, you may not
25 leave DNA behind. Touch DNA, leaving DNA behind on an object

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Cooke - direct

1 through touching, it could depend on many factors, such as some
2 people shed more DNA than others, so they're called good
3 shedders. It depends how long you hold on object for. It
4 depends how long since you touched that object. Also, if you
5 wash your hands before you touch an item, you may not leave any
6 DNA behind.

7 Q. Now relatedly, what, if any, effect does bleach have on the
8 presence of DNA?

9 A. Bleach can degrade the DNA, and therefore when we do our
10 DNA testing, we may not find DNA, or we can't perform the DNA
11 testing because no DNA is left suitable for testing.

12 Q. So let's lead the jury through a typical process for you.
13 You receive an item, right? That's what you testified to?

14 A. Correct.

15 Q. And after examining and receiving the item, what's the
16 step? What's the step that you do next?

17 A. After examining an item, first we'll visually examine the
18 item, and then we'll look for the presence of DNA.

19 Q. And what's that called? Is that extraction?

20 A. The next step would be extraction. So after we submit a
21 sample for further testing, the next step would be extraction.
22 Extraction is where we add chemicals to a tube and to separate
23 the DNA from the rest of the sample.

24 Q. And what is done after DNA is extracted from a physical
25 item or a swab? What happens next?

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Cooke - direct

1 A. The next step is called quantitation, and in this step
2 we're determining how much DNA is in the sample and if there's
3 enough DNA to go on with testing.

4 Q. And to go on with further DNA testing with the OCME, how
5 much DNA is needed?

6 A. 20 picograms per microliter, which is a very, very small
7 amount.

8 Q. That's not visible to the naked eye, is it?

9 A. No, it's not.

10 Q. Can you describe to the jury the process after
11 quantitation?

12 A. The next step is called amplification, and in this step
13 we're making many copies of the DNA in the locations that we're
14 testing.

15 Q. And what is capillary?

16 A. The next step would be capillary electrophoresis, and in
17 this step we're separating the copies of DNA that we make out
18 on a machine and we're visualizing the results and analyzing
19 it.

20 Q. And what's the next step after that?

21 A. Analyzing the results and writing the report.

22 Q. Now can you explain to the jury how a DNA sample is matched
23 or compared with another sample.

24 A. So if an item of evidence, we're able to determine a DNA
25 profile, we can -- if we have a reference sample, we can

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Cooke - direct

1 compare that person's DNA profile to the item of evidence, and
2 in order to determine if it's a match, they have to match --
3 every allele has to match at every single location to deem it a
4 match.

5 Q. 100 percent match.

6 A. Yes, that's correct.

7 Q. Now what happens if you don't have a known sample? Can you
8 still create a profile?

9 A. Yes, we can.

10 Q. And are DNA profiles prepared if a sample is a mixture?

11 A. If a sample is a mixture, it means that more than one
12 person is contributing DNA to that sample. If we're able to
13 determine who's contributing the most DNA to that sample, we
14 can have -- we can -- the major donor to that sample, so
15 whoever's contributing the most DNA, we can get a profile from
16 that.

17 Q. Let's say you had an item and from that item you were able
18 to pull DNA and there was a mixture, which you testified is at
19 least two people. Two people touched that item. You may or
20 may not be able to create a profile is your testimony, correct?

21 A. That's correct. So sometimes if we have a mixture and more
22 than one person is contributing DNA, let's say if they're
23 contributing the same amount of DNA, then we're not going to be
24 able to determine a DNA profile because we're not going to be
25 able to determine who contributed the most DNA from that

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Cooke - direct

1 sample.

2 Q. From the item that was touched.

3 A. Correct.

4 Q. And what happens if you have a representative sample from a
5 particular individual, what do you do next? So if you had the
6 item that is touched, you testified that it could be multiple
7 people who touched it, so you have more than one person, and
8 you're not able to prepare a profile right away, correct?

9 A. Mm-hmm.

10 Q. What happens next? If you're provided a sample from a
11 particular individual, like blood, or a swab from the cheek,
12 what do you do next?

13 A. Okay. So if we have a sample with a mixture on it and
14 we're not able to determine a profile, then we deem that sample
15 to be -- comparison to be done to that sample if we're able to
16 get a reference sample from a certain individual. So if we get
17 a sample, or a reference sample from an individual at a later
18 date, then we can make a comparison to that profile, or to that
19 mixture to determine if they're either in the mixture or
20 excluded from the mixture.

21 Q. Let's talk about the DNA testing in this case, okay? What
22 was your role in the DNA analysis in this case?

23 A. In this case I wrote the reports and analyzed all the
24 testing in the case.

25 Q. And when do you write your reports, after all the testing

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Cooke - direct

1 is done?

2 A. Correct.

3 Q. Do other individuals participate in different parts of the
4 testing?

5 A. Yes, they do.

6 Q. And that's the rotation system that you were talking about
7 before.

8 A. That's correct.

9 Q. Now what role do you play when they're testing these
10 materials?

11 A. I analyze the results of the testing and then I will write
12 my conclusions in the report from my analysis of the tests.

13 Q. Now are there particular testing methodologies that are
14 mandated by specific protocols?

15 A. That's correct. So our lab has standard operating
16 procedures for every test that's done in the lab, and each
17 analyst who performs these tests has to follow these standard
18 operating procedures.

19 Q. And where are those reports? After you prepare them, where
20 are the reports stored?

21 A. In the case file.

22 MR. POSCABLO: May I approach, your Honor?

23 THE COURT: You may.

24 Q. Ms. Cooke, I'm handing you what's been marked for
25 identification as Government Exhibits 1000, 1001, 1002, 1003,

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Cooke - direct

1 and 1000-A. I'd like you to take a look at them --

2 A. Okay.

3 Q. -- very quickly. Did you have an opportunity to review
4 these reports prior to your testimony today?

5 A. I did.

6 Q. And generally speaking, what do you recognize these to be?

7 A. Certified copies of the reports that I wrote for these case
8 files.

9 Q. Who prepared these reports, you did?

10 A. I did.

11 Q. And are these reports made and kept in the regular course
12 of the OCME's business?

13 A. Yes, they are.

14 Q. And is it the OCME's regular practice to create these
15 reports and the underlying documents?

16 A. Yes, it is.

17 Q. And you testified that you prepared them, so you have
18 personal knowledge of these reports, correct?

19 A. I do.

20 Q. And were these reports prepared after the analysis
21 underlying the particular report was completed?

22 A. They were.

23 MR. POSCABLO: Your Honor, the government offers
24 Government Exhibits 1000, 1001, 1002, 1003, as well as 1000-A,
25 your Honor, which is a chart from 1003. We might as well also

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1 offer the demonstrative, 1003-A, which is a blowup of 1000-A.

2 THE COURT: All right. Mr. Pittell?

3 MR. PITTELL: Other than my prior noted objections --
4 well, I'll just note my prior objections.

5 THE COURT: All right. Those documents and the
6 demonstrative are received.

7 (Government's Exhibits 1000, 1001, 1002, 1003, 1000-A,
8 1003-A received in evidence)

9 MR. POSCABLO: Judge, Ms. Chen correctly and
10 appropriately corrected me that 1000-A is actually a
11 demonstrative from 1000 and 1003-A is a demonstrative from
12 1003. I just wanted to correct the record.

13 THE COURT: All right. And I don't know exactly what
14 1000-A looks like or 1003-A looks like, although I've seen it
15 there. If it's simply a blowup, then it will be received as
16 evidence. If it's something else and there's added pieces that
17 make it a demonstrative, then it will be received for
18 identification.

19 You may proceed.

20 BY MR. POSCABLO:

21 Q. Now, Ms. Cooke, I want to direct your attention --

22 MR. POSCABLO: And Ms. Chen, can you please put up,
23 with the court's permission, Government Exhibit 1000, and in
24 particular let's turn to I think the third page of -- oh,
25 that's it.

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Cooke - direct

1 Q. You can look up on the chart or on the screen. Whichever's
2 easier.

3 MR. POSCABLO: Ms. Chen, can you please highlight the
4 part that says, "Testing indicates the presence of human
5 blood."

6 Q. Turning your attention to Government Exhibit 1000, which is
7 on the screen, Ms. Cooke, what is this report?

8 A. This was the report that I wrote for the case file for the
9 evidence that we examined in this case.

10 Q. Okay. Now just as an aside, prior to submitting this
11 report and finalizing the report, is it reviewed by anyone
12 else?

13 A. Yes, it is.

14 Q. By who?

15 A. It is reviewed by my supervisor at the time.

16 Q. Now what does this report show? You testified it's about
17 the evidence, correct?

18 A. That's correct.

19 Q. So let's go through what it says. The portion that
20 Ms. Chen highlighted, can you read that part?

21 A. "Testing indicates the presence of human blood on the
22 following items."

23 Q. Now that's not touch DNA.

24 A. That's correct. It's not touch DNA.

25 Q. And what were the items that human blood was found on?

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Cooke - direct

1 A. A tie, a scarf, and a piece of duct tape.

2 Q. Okay. Now very quickly, what are those numbers after the
3 word "Voucher"? What do those numbers indicate?

4 A. So each item of evidence comes in a particular voucher
5 that's submitted by the New York State Police Department in
6 this case, and this is just a number that represents the
7 voucher that it came in on.

8 Q. And then the item?

9 A. And then the item number. Some vouchers had more than one
10 item, so the item number states which item it was.

11 Q. So it's your expert opinion that DNA in the form of human
12 blood was found on the tie, the scarf, and the duct tape, is
13 that correct?

14 A. That's correct.

15 Q. Now let's turn to the second line, with starts with
16 "Human." Can you read that to the jury.

17 A. "Human DNA sufficient for PCR DNA testing was found on the
18 following samples."

19 Q. Okay. And what does that mean?

20 A. It means that DNA that's not blood or semen was found on
21 the samples listed below.

22 Q. And just for the record, it reflects cigarette butts,
23 correct?

24 A. Some are cigarette butts, some are swabs that we did of
25 duct tape, swabs of a glove, and then more cigarette butts, and

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1 a swab of gum that was found on -- a piece of gum was found on
2 a cigarette butt.

3 Q. And each of these items has a corresponding voucher number?

4 A. That's correct.

5 Q. And an item number.

6 A. That's correct.

7 MR. POSCABLO: Next page, Ms. Chen. Actually, let me
8 go back one second. You don't have to go back, Ms. Chen.

9 Q. But what does PCR DNA testing mean?

10 A. PCR stands for polymerase chain reaction, and one of the
11 steps that I had mentioned before, which is amplification, in
12 which we make many copies of the DNA at certain locations,
13 that's what PCR is.

14 MR. POSCABLO: Next paragraph, Ms. Chen. That's
15 great.

16 Q. That first paragraph that starts, "PCR DNA typing," can you
17 just explain to the jury what that means, what that paragraph
18 is. You don't have to read it.

19 A. Okay. So we found a single source, so coming from one
20 person, DNA profile on the following items, so two cigarette
21 butts and the swab of gum, and it was unknown because it didn't
22 match any of the reference samples of the victims in the case,
23 or elimination sample.

24 Q. What is an elimination sample? Can you explain to the jury
25 what that is.

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1 A. Any victim or anyone who's present at the crime scene, we
2 can eliminate them or compare them to the items of evidence,
3 and so it's a swab that comes from their mouth and we just use
4 it as a reference sample and compare it to the items of
5 evidence in the case.

6 MR. POSCABLO: Ms. Chen, could you highlight that
7 second sentence in that first paragraph that says, "This DNA
8 profile is not the same."

9 Q. Are those the elimination samples you're talking about?

10 A. That's correct.

11 Q. Can you tell us who were the elimination samples taken
12 from, according to your report?

13 A. Eugene Brown, Jeanette Adams, Aisha Grahm and Brenda Luke.

14 Q. So the finding in this first paragraph is that none of them
15 contributed to the cigarette butt, the cigarette butt, or the
16 swab of gum, is that correct?

17 A. That's correct. We found an unknown male DNA profile.

18 Q. And that's what's reflect in the next line?

19 A. Yes, so we deemed it male donor A and we did a statistic to
20 it. And the statistic states that we expect to see this DNA
21 profile in 1 in greater than 6.8 trillion people.

22 Q. What does that mean?

23 A. So simply, there's about 6.8 trillion -- or 6.8 billion
24 people on planet Earth, so we expect to see this DNA profile
25 once in greater than 6.8 -- sorry -- so we expect to see this

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Cooke - direct

1 DNA profile once in about a thousand planet Earths, each
2 containing 6.8 billion people.

3 Q. So this is one person. Unless they're twins, there's one
4 person who contributed this male donor A?

5 A. Yes.

6 Q. Let's turn to the highlighted, what looks like bolded, "The
7 DNA profile." Can you read that out loud and just tell us what
8 that means.

9 A. "The DNA profile of male donor A is suitable for entry into
10 the State DNA Index System (SDIS)/National DNA Index System
11 (NDIS), and the OCME local DNA databank."

12 Q. What does that mean?

13 A. So there's a database that's called CODIS, Combined DNA
14 Index System, and it's maintained at three levels -- local,
15 state, and national -- and this database -- these databases
16 house samples from evidence such as this or known individuals.

17 Q. Okay. So before we turn to the next line, regarding male
18 donor A, is it your expert opinion that male donor A
19 contributed to both the cigarette butt listed as item 3 in
20 voucher number ending in 4209, the cigarette butt in voucher
21 number ending in 7168, item 4, and the swab of gum from voucher
22 number ending in 7168, item 4?

23 A. That's correct.

24 Q. And let's go to female donor A. What's the conclusion
25 here?

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1 A. So in the cigarette butt we also determined that there was
2 a single source DNA profile and it came from a female, so it
3 was unknown. It did not match Eugene Brown, Jeanette Adams,
4 Aisha Grahm, or Brenda Luke, so we deemed it female donor A.

5 Q. And the same statistic, 6.8 trillion people, 1 in
6 6.8 trillion, 1 in greater than 6.8 trillion people.

7 A. That's correct.

8 Q. And that was found on a different cigarette butt, the
9 cigarette butt that's vouchered as voucher number ending in
10 7168, item 5, is that correct?

11 A. That's correct.

12 Q. Now, Ms. Cooke, at the time you prepared this report, other
13 than the elimination samples, did you have any other samples to
14 compare the DNA to?

15 A. No, we did not.

16 Q. Not at the time of this report.

17 A. That's correct.

18 MR. POSCABLO: Okay. The next page, Ms. Chen.

19 Q. Now the first paragraph on -- I think it's page 3,
20 identifies the female donor B, is that correct?

21 A. That's correct.

22 Q. Can you tell the jury what your findings are, or were, with
23 regards to female donor B.

24 A. So on the cigarette butt we -- on this cigarette butt, we
25 determined another female donor -- female DNA profile that

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Cooke - direct

1 wasn't the same as Eugene Brown, Jeanette Adams, Aisha Grahm,
2 Brenda Luke, male donor A, or female donor A, so we deemed it
3 female donor B.

4 MR. POSCABLO: Now, Ms. Chen, can you highlight the
5 section going down all the way to PCR DNA typing. Right there.

6 Q. Was the glove tested?

7 A. Yes, it was.

8 Q. Was the actual glove tested or swabs?

9 A. We tested the actual glove.

10 Q. And what was the conclusion from testing the glove?

11 A. We found a mixture of DNA from at least three people on the
12 glove. We weren't able to determine a major donor who
13 contributed the most DNA so we just deemed that the D -- the
14 DNA profiles of individual contributors to the mixture could
15 not be determined but the mixture of DNA was suitable for
16 comparison.

17 Q. What does that mean, suitable for comparison?

18 A. It means that we can do a comparison of -- once we get in a
19 reference sample, we can compare that person's DNA profile to
20 see if they're a possible contributor to the mixture.

21 Q. Okay. Now let's just quickly go through the bottom part of
22 this.

23 MR. POSCABLO: The very last paragraph, Ms. Chen.

24 Q. What was the conclusion here?

25 A. The swabs from the duct tape, item 4 and item 7, the DNA

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Cooke - direct

1 profile was the same as the DNA profile of Jeanette Adams;
2 therefore, she is the source of the DNA.

3 MR. POSCABLO: Okay. Ms. Chen, the next page, please.

4 The top part. Thank you.

5 Q. And the conclusion in the top of page 4?

6 A. So on the swabs of the duct tape and then the bloodstains
7 found on the duct tape, tie, and scarf, the DNA profile was the
8 same as that of Eugene Brown; therefore, he is the source of
9 the DNA on these items.

10 Q. And then the next line that starts with human DNA was found
11 on the following samples?

12 A. The following samples, the swab of the bottle, a swab from
13 a possible chicken bone, and swabs from a different glove,
14 which was item 2, human DNA was found, but it was insufficient
15 to go on with further DNA testing, so as I said before, when we
16 determine how much DNA is in a sample and we need a certain
17 amount to go on for further testing, which is 20 picograms per
18 microliter, these samples each had less than, and we couldn't
19 go on with further testing.

20 Q. Now you testified earlier about CODIS. Was there a CODIS
21 hit for any of the items that you tested?

22 A. Yes, there was.

23 Q. And did a name come back for that CODIS hit?

24 A. Yes.

25 Q. What was that name?

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Cooke - direct

1 A. Trevor Cole.

2 Q. Okay.

3 THE COURT: Can you remind me what CODIS is.

4 THE WITNESS: CODIS, which stands for Combined DNA
5 Index System, it is a database maintained on three levels --
6 local, state, and national -- and they house profiles from
7 known individuals and profiles from other evidence cases,
8 either local, state, or national level.

9 THE COURT: All right. Thank you.

10 Q. And was there a female that was identified by CODIS?

11 A. Yes, there was.

12 Q. And do you remember the name?

13 A. I believe it was Lisa Hilton.

14 Q. Lisa Hilton? Okay. Now let's turn to Government Exhibit
15 which is in evidence, 1001. Now generally speaking, before we
16 highlight this, what was the purpose of this report?

17 A. So this report, we received DNA swabs from Trevor Cole. We
18 cut the swab, examined it, and obtained his DNA profile and
19 compared it to the samples, evidence samples in the case.

20 MR. POSCABLO: So Ms. Chen, can you highlight that
21 portion. Thank you.

22 Q. Can you tell us exactly what Trevor Cole's DNA sample was
23 tested against, or compared to.

24 A. It was compared to all the evidence items that comparisons
25 could be made, so in this case we found that he is the source

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Cooke - direct

1 of the DNA from the following samples, so that means his DNA
2 profile was the same as the DNA profile found on these items,
3 and that was the cigarette butt on voucher ending in 4209,
4 item 3, cigarette butt in voucher 7168, item 4, and the swab of
5 gum on voucher ending in 7168, item 4.

6 Q. Was there anything that he was not the source of?

7 A. Yes. We found that he was not the source of the cigarette
8 butt on the voucher ending in 7168, item 5, and the cigarette
9 butt on voucher ending in 4209, item 1.

10 Q. And was there something that he was excluded from?

11 A. So I said that we found a mixture of DNA on the swabs of
12 the glove and there was at least three contributors. We
13 compared Trevor Cole's DNA profile to that mixture and we found
14 that he was excluded as a contributor to that mixture.

15 Q. And I want to highlight something for the jury here.

16 What's the difference between saying Trevor Cole is not the
17 source of the DNA and saying that he is excluded as a
18 contributor to the DNA? What's the difference?

19 A. So if it's a single source DNA profile, so one person
20 contributed DNA to that item, then we can say he's not the
21 source because we're comparing his DNA profile to the DNA
22 profile found on that item. If it's a mixture, so more than
23 one person is contributing DNA, and we don't have a DNA profile
24 from that mixture, then we can either say that it could be
25 possibly a contributor or they can be excluded as a

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1 contributor, because we don't see their DNA profile in this
2 mixture.

3 MR. POSCABLO: Ms. Chen, just the bottom part. Could
4 you highlight that bottom part.

5 Q. And what does that show?

6 A. This shows that the following items were consistent with
7 the DNA profile of Jeanette Adams so we didn't compare Trevor
8 Cole's DNA profile to these items.

9 MR. POSCABLO: And the next page, Ms. Chen, page 2.

10 Q. Directing your attention to the top of page 2, Ms. Cooke,
11 what does that show? What was your conclusion there?

12 A. That these items were consistent with the DNA profile of
13 Eugene Brown, so we didn't compare Trevor Cole's DNA profile to
14 the following items.

15 Q. And the next -- and finally, the last line?

16 A. The last line states that the following items were
17 insufficient, so again, these -- we found DNA on these items
18 but it wasn't enough to go on further testing, so we could not
19 compare Trevor Cole's DNA profile to these items.

20 MR. POSCABLO: Now one thing I want to do, Ms. Chen,
21 can you just put up GX 1000 again, to the area that says Date.

22 Q. What was the date that this report was prepared?

23 A. April 22, 2013.

24 Q. And let's go back to GX 1001. What was the date that this
25 was prepared?

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1 A. April 22, 2013.

2 Q. Let's go to 1002. Now generally speaking, what is
3 GX/Government Exhibit 1002 analyzing? What's the conclusion
4 there?

5 A. So we received a swab that came from Dominique
6 Jean-Philippe. We submitted this swab for DNA testing and we
7 obtained the profile of Dominique Jean-Philippe.

8 MR. POSCABLO: Okay. Ms. Chen, can you highlight
9 that.

10 Q. And the same date, April 22, 2013, correct?

11 A. Correct.

12 Q. Okay. So what was the conclusion here with regards to
13 Mr. Jean-Philippe?

14 A. We compared Dominique Jean-Philippe's profile to the
15 evidence items and we found that he's not the source of the DNA
16 found on the following items, which were the cigarette butts
17 and the swab of the gum.

18 Q. What about the next line?

19 A. Dominique Jean-Philippe was excluded as a contributor to
20 the mixture of DNA found on the swabs of the glove.

21 Q. And the last line?

22 A. We didn't compare his DNA profile to the following items
23 because the items were consistent with the DNA profile of
24 Jeanette Adams.

25 Q. So fair to say that Dominique Jean-Philippe's DNA was not

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Cooke - direct

1 found on any of the items that you tested?

2 A. That's correct.

3 MR. POSCABLO: Let's go to 1003. And we'll go to the
4 second page. Thank you, Ms. Chen. Or the first page of 1003.

5 Q. At some point did you receive a sample of DNA from David
6 Delva?

7 A. Yes, we did.

8 Q. Okay. And was a profile of Mr. Delva's DNA determined?

9 A. Yes.

10 Q. All right. So let's talk about Government Exhibit 1003,
11 which is in evidence.

12 MR. POSCABLO: Can you highlight that portion.

13 Q. Can you tell the jury what your conclusions were with
14 regards to this report.

15 A. So we compared David Delva's profile to the mixture of DNA
16 that was found on the swabs of the glove, and we could not rule
17 him out as a contributor, so we had -- there was a positive
18 association between David Delva's profile and the mixture of
19 DNA that was found on the glove. So therefore, we did a
20 likelihood ratio. And a likelihood ratio is -- basically
21 there's two scenarios -- one scenario in which a person
22 contributes DNA to the mixture, along with two unknown,
23 unrelated individuals, and the other scenario is that three
24 unknown, unrelated individuals contributed to the mixture and
25 not that person. And then we do a ratio and get a statistic

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Cooke - direct

1 from it.

2 Q. Let's do that again. Let's do that very slowly.

3 A. Okay.

4 Q. And let me see if I understand it. Because I got an A in
5 Bio. The comparison you're doing is three people who you don't
6 know, unknown, unrelated people, as compared to Mr. Delva and
7 two unknown, unrelated persons, and the conclusion is that it's
8 4.42 million times more probable that it contains Mr. Delva's
9 and two unrelated, unknown individuals than three unknown,
10 unrelated persons, is that correct?

11 A. That's correct.

12 Q. That A in Bio helped.

13 Okay. The next line, "Therefore," can you just read
14 that out loud to the jury.

15 A. "Therefore, there is very strong support that David Delva
16 and two unknown, unrelated persons contributed to this mixture,
17 rather than three unknown, unrelated persons."

18 Q. Let's talk about something. The term "unrelated" means
19 what?

20 A. Means that you're not related to them so they're not your
21 family.

22 Q. If a person who is related to Mr. Delva -- father, uncle, a
23 nontwin brother, a cousin -- was one of the individuals who
24 touched, or was one of the other individuals who may have
25 touched this glove, does that exclude Mr. Delva from your

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Cooke - direct

1 analysis?

2 A. No, it does not.

3 Q. Okay. Could it potentially affect something in your
4 conclusion?

5 A. It can. So when we did this statistic, we didn't use any
6 other known reference sample, so for example, if we tested and
7 know someone else touched an item and let's say they happen to
8 be someone who's related to Mr. Delva, then it could change the
9 statistic, but in this case we just strictly compared David
10 Delva's profile to the mixture of DNA and did the statistic
11 from that.

12 Q. Let's be clear about something, though. If you had a
13 sample from that relative and it's possible that the relative
14 also touched that glove, does the statistic necessarily go
15 down?

16 A. No, it does not.

17 Q. Can you explain.

18 A. It depends on many different factors, so first, that if we
19 have a reference, another reference sample that we are
20 comparing to items, they have to be also positively associated
21 with the mixture, so a possible contributor to this mixture
22 before we include them in our statistic. And then it depends
23 on which alleles that they share and how many alleles that they
24 share, and that's how the statistic will change.

25 Q. So it's possible that the statistic could go higher.

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Cooke - direct

1 A. I wouldn't know until I did the calculations.

2 Q. Okay. Good.

3 THE COURT: Let me ask, what are the chances that you
4 could have a mistake for David Delva because a brother was the
5 one who had touched the DNA?

6 THE WITNESS: So we strictly looked at David Delva's
7 profile and his profile only and compared his DNA profile and
8 found that there was a positive association between his profile
9 and -- being in the mixture of DNA, or that we see his DNA
10 alleles in his profile in the mixture of DNA. So if let's say
11 we have his brother's DNA profile. They're not going to --

12 MR. POSCABLO: Nontwin.

13 THE WITNESS: Nontwin. Will not share every location,
14 so they'll have a different DNA profile. So they may or may
15 not have been a contributor, or a possible contributor to this
16 mixture, but they're not going to have the same DNA alleles, so
17 it's a separate comparison, so we could say they may or may not
18 be a contributor to this mixture.

19 THE COURT: I see.

20 MR. POSCABLO: Now I actually want to dig into that a
21 little bit, and it's a good segue. Your Honor, may I approach?

22 THE COURT: Yes. Now let me just tell you, at
23 11:00-ish we're going to take a break, so I just want to give
24 you fair warning so you can find a logical place.

25 MR. POSCABLO: Great. Thanks, your Honor.

E9a1del2

Cooke - direct

1 BY MR. POSCABLO:

2 Q. Before we do that, can you explain to the jury how you
3 determined that at least -- I think you said three
4 individuals -- at least three individuals touched that glove.
5 What I mean is, what I want you to explain to the jury is, why
6 isn't it at least two? Why isn't it at least four? Can you
7 explain to the jury what that means.

8 A. Okay. So before I stated that you receive half of your DNA
9 from your mom and half from your dad. So at each location
10 our -- the alleles are represented by numbers, so we'll see one
11 number from your mom and one number from your dad. They can be
12 the same number, so in that case you'll only see one number.
13 If we start to see two or more numbers at each location, so if
14 we see three or four, then there is an indication that there's
15 a mixture. If there's three or four, that means that we're
16 starting to see at least a two-person mixture. If there's more
17 than four, then we'll start seeing at least a three-person
18 mixture. So five or six. So you receive two from your mom --
19 or one from your mom, one from your dad, so two would be one
20 person; three or four, it could be possibly two people; five or
21 six, there could be possibly three people; if it's over six,
22 then there's four or more contributors and then we don't do any
23 comparisons to that sample.

24 Q. Let's go over that in even more detail.

25 MR. POSCABLO: May I approach, your Honor?

E9aldel2

Cooke - direct

1 THE COURT: Yes.

2 MR. POSCABLO: And Ms. Chen, can you put up what's
3 been entered into evidence as Government Exhibit 1003-A.

4 And with the court's permission, may I ask Ms. Cooke
5 to step down?

6 THE COURT: Yes.

7 MR. POSCABLO: And, Judge, we'll have it on the
8 screen, so anyone who can't see the chart here can also follow
9 along.

10 Just one moment, your Honor.

11 Q. All right. I've placed on the screen and also in the
12 demonstrative 1003-A. Ms. Cooke, what is this document,
13 generally?

14 A. It's a table that's in our case file, so in this case it
15 was in the case file with David Delva's DNA profile.

16 Q. Turning your attention to where it actually says David
17 Delva, can you explain what these series of numbers represent.

18 A. So this is David Delva's DNA profile. I said that we have
19 15 locations and a sex determining location, so going across
20 the top here, these are the 16 locations we test.

21 Q. So there are 15 locations listed. So for the record, the
22 first location you tested, D for David, 8, S for Sam, 1179.

23 A. That's correct.

24 Q. And there are 15 going on, and then which one --

25 A. Well, then there's one additional, and that's called Amel,

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1 and that's the sex determining location. So X,X would stand
2 for female, X,Y is male.

3 Q. And Mr. Delva, we all agree, is a male, so it's X,Y.

4 A. That's correct.

5 Q. Explain to us what these numbers represent.

6 A. So I said that we test 15 locations, so this is the locus
7 or all together it's the loci that we test, and at each
8 location we receive half from our mom, half from our dad, and
9 they're represented by numbers. So in this case David Delva
10 received a 12 and a 15, one from his mom, one from his dad. In
11 this case, he just has a 30 here, so he received a 30 from his
12 mom, and a 30 from his dad. And so on and so forth across.

13 Q. And on and on across.

14 A. Yes.

15 Q. And these are the numbers, these are the loci, right?

16 A. That's correct.

17 Q. And these are the alleles that you're talking about. And
18 what I mean by "this," let me be clear for the record. The
19 loci are the 15 places you're talking about.

20 A. Mm-hmm.

21 Q. And then the alleles are the numbers that represent a
22 person's unique DNA profile.

23 A. That's correct.

24 Q. Okay. Let's talk about the line that says "swabs of
25 glove." What does that mean?

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1 A. So these are the mixture of DNA. This is the mixture of
2 DNA that we found on the swabs of the glove. We do two
3 amplifications or making copies, we do a splice to make sure
4 that there's no sample mix-up, and it's to confirm the mixture
5 in the sample.

6 Q. So dup stands for duplicate.

7 A. Yes, that's correct.

8 Q. You duplicated the swabs -- or the DNA from the glove and
9 you tested it against Mr. Delva twice.

10 A. Well, that's correct. So when we do the test, we take a
11 portion of the sample and we do the amplification, so making
12 the copies from that sample. And then at a separate time we do
13 a separate -- take a separate sample from that same sample, or
14 take a sampling from that same sample and do the amplification.

15 Q. Can you explain to the jury, pointing to specific spots,
16 how you're able to determine that they were not two or not four
17 but potentially three people who contributed to the mixture of
18 the DNA that you found on the glove.

19 A. Okay. So going across, we look at every single location to
20 determine how many people are contributing to this mixture. So
21 going across, in the first location, there are four alleles
22 seen in the first amplification and there are seven seen in the
23 second amplification.

24 Q. What does that mean?

25 A. So here -- and then we see that the 10, 12, 14, and 15 are

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1 duplicated here. So that means, looking at the first one, we
2 can say maybe there's a possibility of two. This one, maybe
3 there's more than three. We don't know. So we look at the
4 whole entire sample. So going across, we look at every
5 location.

6 Q. Are there locations where there are at least four?

7 A. So -- yeah. So going across the second location, there's
8 three; the third location, there's three; the fourth location,
9 there's three; the fifth location, there's four; sixth
10 location, there's four, if you look at both of them together.

11 Q. Meaning there's 7, 8, 9, in the first swab of the glove, in
12 the duplicate, there's 6, 7, 9.

13 A. Mm-hmm. So we look at both and we take everything into
14 consideration. The next one, there's four; the next one,
15 there's four; this one, the following one, there's five; the
16 next one, there's six; the next one, there's three; two; one;
17 this is the sex determining location; then two; and one. So
18 taking everything into consideration, we said at least three
19 individuals.

20 Q. Why? What's the standard that you use to determine that?

21 A. So because some locations have three or four, some have
22 five or six, and then one actually has seven, in our lab, in
23 order to call something at least a three-person mixture, we
24 need -- there should be two or more locations containing more
25 than four alleles. If two or more locations contain more than

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1 six alleles, then we deem the sample inconclusive and say that
2 it cannot -- no comparisons can be done. So in this case, two
3 or more locations had more than four alleles but only one
4 location had seven, so we deemed that it was at least a
5 three-person mixture.

6 Q. Now let's be clear about what you just said. If there were
7 enough alleles in particular loci or locus in which you would
8 have to call four or more, the lab would deem it inconclusive
9 under its protocol, correct?

10 A. If there's more than six --

11 Q. If there's more than six?

12 A. -- in two locations, under our protocol, we would deem it
13 inconclusive.

14 Q. That's a standard. That doesn't mean you weren't able to
15 pull DNA out of it, is that correct?

16 A. That's correct.

17 Q. And it doesn't mean that you wouldn't be able to compare
18 that to something else, correct?

19 A. That's correct.

20 Q. It just means that the lab has created a standard that says
21 if there are six or more alleles --

22 A. I'm sorry. Seven or more. So more than six.

23 Q. -- more than six alleles in a particular locus, or any
24 number of locus, the lab would not conduct any more testing;
25 you'd call it inconclusive.

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1 A. That's correct.

2 Q. If you used a different lab, they would still test, or they
3 could test?

4 A. It depends on that lab's policy.

5 Q. Okay. So in this situation, what was the most amount of
6 alleles that you could find in a particular -- in all of the
7 loci?

8 A. So in the first location we saw seven. It was not
9 duplicated. So it could be that maybe more than three people
10 are contributing DNA or it can mean that there's something in
11 our amplification process that something -- one of the alleles
12 cannot be true DNA so it's something that's called an artifact,
13 and this is seen on -- in DNA testing, and it's well known and
14 documented, and it's not true DNA but it's something from
15 either the biology or technology that we use in the lab. But
16 in this case we don't know if it's an artifact, it could be a
17 true DNA allele coming from an additional contributor, we don't
18 know, but because it wasn't replicated and we only see it in
19 one location, that's why we deemed it at least three
20 contributors.

21 Q. And did you make that decision?

22 A. Yes, I did.

23 Q. Was that reviewed by anyone?

24 A. Yes, it was reviewed by my supervisor in the case and then
25 when a separate -- two supervisors reviewed this file and again

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1 agreed with that conclusion.

2 Q. Why two, as opposed to, as the other ones, just one?

3 A. When we do the statistic of the likelihood ratio, we need
4 two separate reviews by supervisors in order for the case to be
5 concluded.

6 Q. So all that work -- the extraction, the amplification, the
7 capillary with another word that I don't remember -- it just
8 becomes a matching game, right?

9 A. I guess you could say that.

10 Q. So let's go over how you determined that David Delva
11 contributed to this swab of glove. In the first locus, what
12 are the numbers?

13 A. So David Delva is a 12, 15 in the first location, and then
14 we look --

15 Q. Can you circle what you find.

16 A. Sure. So then we look in the sample of the glove and we
17 see his DNA alleles are in that location in the mixture in the
18 swab. So we see the 12, 15, and we see the 12, 15.

19 MR. POSCABLO: And for the record, I've handed
20 Ms. Cooke a blue Sharpie and she is circling the areas in the
21 rows "swabs of glove" and "swabs of glove dup" to indicate
22 where, if any, the numbers associated with Mr. Delva appear on
23 the swab of glove.

24 Q. Let's go to the second locus.

25 A. So in the second location, David Delva is a 30, and we see

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1 the 30 in both the initial amplification and the duplicate
2 amplification of the glove.

3 Q. Okay. Third?

4 A. Mr. Delva is at 8, 11, and we see the 8, 11 in the initial
5 and the duplicate amplification.

6 Q. And the fourth?

7 A. Mr. Delva is a 7, 12, and we see the 7, 12 in the initial
8 amplification and just the 12 in the duplicate amplification.

9 Q. Can you explain to the jury why the 7 may not have shown
10 up?

11 A. So in a sample such as the swabs of the glove, which is
12 touch DNA, there was not much DNA found on the swabs of the
13 glove. I believe it was around 31 picograms per microliter.

14 Q. But more than enough for you to create a --

15 A. So if you remember, we need 20 picograms per microliter to
16 go on. An ideal sample would have been 100 picograms per
17 microliter in the sample, so in this case we had 31. So we're
18 still able to go on with additional testing, but sometimes, in
19 samples that have a lower amount of DNA, we see something
20 that's called allele -- something that's called allele dropout.
21 So sometimes some of the fragments of the DNA are smaller and
22 some are larger, and sometimes in the larger fragments of the
23 DNA in certain locations, we see allele dropout because it's a
24 smaller sampling of a DNA in that sample. So sometimes we see
25 something called allele dropout. Doesn't mean that the alleles

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1 aren't there. Sometimes the alleles are too low for our
2 software to call because we have a threshold or sometimes we --
3 we see it but it's too low to be called by the software or
4 sometimes it might drop out.

5 Q. Can you explain the differences, or the results between the
6 swabs of the glove and the swabs of the duplicate?

7 A. So sometimes when we do this amplification, two separate
8 tests, and sometimes they're not going to amplify exact same
9 way because it's two separate tests, so we want to make sure
10 that the -- when we do the initial and the dupe, we want to
11 make sure that the samples, the mixtures are concordant with
12 each other, but sometimes they're not going to be exactly the
13 same. And we often see this in samples that are low, such as
14 the sample that's 31 picograms per microliter.

15 Q. Let's go to number 5, the fifth locus.

16 A. So Mr. Delva is 14, 16, and we see the 14, 16 in the
17 initial and then we see the 14, 16 in the dupe.

18 Q. And the next locus, the sixth?

19 A. So Mr. Delva is 7, and we see a 7 in the initial and a 7 in
20 the duplicate.

21 Q. The seventh?

22 A. Mr. Delva is a 10, 12, and we see the 10, 12 in the initial
23 and the 10, 12, in the dupe.

24 (Continued on next page)

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1 BY MR. POSCABLO:

2 Q. And eight?

3 A. Mr. Delva's a 12 and there's a 12 in the initial and a 12
4 down.

5 Q. Nine?

6 A. Mr. Delva's a 1922. There's a 19 in the initial and then a
7 1922 in the duplicate.

8 Q. The tenth?

9 A. Mr. Delva is a 1213.2. We see the 12 and 13.2 in the
10 initial and then a 12 and 13.2 duplicate.

11 Q. The next one?

12 A. Mr. Delva is a 16. We see a 16 in the initial and 16
13 duplicate.

14 Q. Next one?

15 A. Mr. Delva's nine ten in the initial and a nine in the
16 duplicate. The next one is Mr. Delva is a 416 and we only see
17 the 16. So in this case Mr. Delva's a 14 not seen in the
18 initial and dupe and again the due to the allele dropout. In
19 this particular case looking at the raw data we do see a small
20 peak which is our raw data in the place of a 14 but we can't
21 tell it for certain because it was too low to be called by our
22 computer software. But again, we take everything into
23 consideration when we are doing a comparison of the sample.

24 Q. What you are saying is you reviewed the raw data?

25 A. Yes, I did.

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1 Q. And based on your standards you are now willing to call
2 that there was a 14 there?

3 A. It is a standard set forth by our software. So there's a
4 certain threshold and if it's below that the computer won't
5 call it but we can still look through the raw data and still
6 still see a peak there and see it is in the location of a 14
7 but because it's too low to be called we can't say.

8 Q. Next?

9 A. The next one is Camille Jennings and this is where we have
10 the sex determining location. The next one Mr. Delva's a 12
11 and we see a 12 in the initial dupe. And the next one is
12 called FGA and Mr. Delva's 1824. And one amplification we
13 don't see anything and this, we see little peaks but they were
14 too low to be called by the software. And the next one we have
15 18 but no 24.

16 And I just want to state the D18 S51 where we don't
17 see the 14 and FGA where we don't see the 24 they are larger
18 fragments of DNA. So this is why we're more likely to see
19 allelic dropout. And notice how like in certain ones we see
20 maybe four or more alleles at each location and these you only
21 see one or none. That's because they're larger fragments and
22 alleles are dropping out.

23 MR. POSCABLO: OK. All right. Your Honor, the
24 government offers what was formally 1003-A now is 1003-R for
25 revised.

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1 THE COURT: Mr. Pittell.

2 MR. PITTELL: Subject to my prior objections.

3 THE COURT: All right. 1003-R is received.

4 (Government's Exhibit 1003-R received in evidence)

5 THE COURT: And is now a good time, Mr. Poscablo, to
6 take our midmorning break?

7 MR. POSCABLO: It's a great time, your Honor.

8 THE COURT: Terrific. Ladies and gentlemen, you may
9 go off and take a break and we are going to come back in about
10 12 or so minutes. I want to remind you not to talk to anybody
11 about this case and not to try to become a DNA expert yourself,
12 not to research or in any way try to investigate anything that
13 you hear about this case on your own. Thank you.

14 (Jury not present)

15 THE COURT: All right. Ms. Cooke, you can step down
16 and take a break for ten or 12 minutes. Thank you.

17 Ladies and gentlemen, let's all be seated.

18 (Witness not present)

19 THE COURT: All right. I had two things that I wanted
20 to go over and just be clear about. One was there is a line of
21 questioning from Ms. Geraci about the 305 phone and at one
22 point she asked whether or not Mr. Accilien had called
23 Mr. Delva and it was from Mr. Accilien's home to Mr. Delva
24 elsewhere and Mr. Pittell you objected to that. The question
25 was formed. There was no sort of form issue. I took it as a

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1 scope, potential scope issue and then deemed it within the
2 scope given the amount of time spent on where the phone could
3 be at various points in time and who had it at various points
4 in time. So that was the basis for my ruling. Did you have
5 any other objection that you can recall?

6 MR. PITTELL: I don't recall offhand. I'll take a
7 look at the transcript tonight.

8 THE COURT: If there's something else then let me
9 know.

10 In terms of the testimony of Mr. Accilien which we had
11 anticipated and was raised in advance of trial in an in limine
12 motion relating to prior acts, that came in I would say
13 relatively as expected. And there was a question put to
14 Mr. Accilien about why he had asked Mr. Delva to accompany him
15 to the crime scene. That actually had been also addressed on
16 direct-examination. I did allow the Prior Act answer for the
17 reasons that were set forth in my pretrial ruling which
18 included a 403 analysis and I just wanted in particular to
19 mention the 403 analysis and the Court specifically weighing
20 the probative value completing the story, state of mind, etc.
21 The probative value against any undue prejudicial effect and I
22 also provided a cautionary instruction for the jury. In light
23 of that because it did come in differently the first round on
24 direct, Mr. Pittell, we were discussing the Similar Acts
25 instruction before. So you'll just keep in mind whether or not

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1 you want to ask for that Similar Act instruction in light of
2 the new testimony that came in.

3 Those are the two things I had wanted to raise.
4 Anybody want to raise anything else?

5 MS. GERACI: No, your Honor.

6 THE COURT: All right. Let's take our own brief break
7 and then we'll come back.

8 (Recess)

9 THE COURT: Let's bring out the jury.

10 (Jury present)

11 THE COURT: All right. Ladies and gentlemen, let's
12 all be seated.

13 All right. Mr. Poscablo, you may proceed, sir.

14 MR. POSCABLO: Thank you, your Honor.

15 Ms. Chen, will you, please, place on the screen
16 Government Exhibit 101.

17 (Pause)

18 Q. Directing your attention, Ms. Cooke, to the paragraph that
19 starts "the results are the same". Can you see that up there?
20 And you can refer to the document that's before you. Am I
21 correct that this is the report regarding Trevor Cole?

22 A. That's correct.

23 Q. Am I correct and I'll read it, that the conclusion here is
24 that Trevor Cole is the source of the DNA found on the samples
25 listed below; is that right?

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1 A. That's correct.

2 Q. What are the samples that were listed?

3 A. Cigarette butt from voucher ending in 4209 item three,
4 cigarette butt from voucher 7168 item four and the swab of gum
5 voucher ending in 7168 item four.

6 MR. POSCABLO: So Ms. Chen, can you, please, put on
7 the screen Government Exhibit 1008 which is in evidence.

8 Q. Now this is another chart that you prepared; is that
9 correct?

10 A. That's correct.

11 Q. And this is for Trevor Cole?

12 A. That's correct.

13 Q. OK. Just want to quickly go over this chart. Am I correct
14 that a review of this chart will show that not all of
15 Mr. Cole's alleles showed up in, I think it's in the swab of
16 gum; is that correct?

17 A. That's correct.

18 Q. So this happens?

19 A. Yes. Again, I think this sample when I went over my notes
20 the swab of the gum had about 21 picograms per microliter. So
21 again sometimes we see allelic dropouts in samples of a low
22 amount of DNA to start.

23 MR. POSCABLO: Ms. Chen, focus you on the top part.

24 Q. Very quickly go over a few spots, for example, in the third
25 locus swab of gum duplicate, it's missing an 11?

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1 A. That's correct.

2 Q. And in the fifth locus the swab of gum, not the duplicate
3 is missing a 17?

4 A. That's correct.

5 Q. And it happens a few times in Trevor Cole's, correct?

6 A. In the swab of the gum?

7 Q. Yes.

8 A. That's correct.

9 Q. Well, complete the record. An eight locus, the swab of gum
10 is missing an 8?

11 A. That's correct.

12 Q. The ninth locus is missing a thirteen in the duplicate and
13 the 11 locus I have starts VWA, the swab of gum amount
14 duplicate are -- I'm sorry. The -- yeah the swab of gum and
15 the duplicate are missing 15?

16 A. That's correct.

17 Q. And but here you were able to determine that this was, in
18 fact, Trevor Kohl's DNA on there.

19 A. In this case it was a single source DNA sample, so it came
20 from one person and we determined that DNA profile and that
21 profile met a statistic in which we were able to determine that
22 and conclude that it is Trevor Cole.

23 Q. And the difference between this and the one involving
24 Mr. Delva is that Mr. Delva, the item from which Mr. Delva's
25 DNA was found was a mixture?

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1 A. Yes. In that case it was a mixture. Again, we saw allelic
2 dropout because it was low amount of DNA to start with.

3 MR. POSCABLO: Ms. Chen, you can take that down.

4 Q. You mentioned the term "likelihood ratio". What does that
5 mean?

6 A. Simply a likelihood ratio is a statistic in which we get
7 the probability between, of two different scenarios and one is
8 a scenario in which a person contributes DNA to the mixture
9 along with unknown or unrelated individuals compared to
10 scenario which an individual does not contribute DNA to this
11 mixture and we get the probability of both and get the ratio of
12 that.

13 Q. That's the ratio that I was doing with my left hand and my
14 right hand. One side had Mr. Delva and two unknown unrelated.
15 The other side had no Mr. Delva and three unknown unrelated?

16 A. That's correct.

17 Q. Now, what's the relationship between that, the likelihood
18 ratio and something called the forensic statistical tool?

19 A. So, in our lab when we perform the likelihood ratio it's a
20 program that's called Forensic Statistical Tool. This program
21 was created in-house by one of our statistician and one of our
22 other forensic biologists. And it went through many
23 validations and testing and then was subsequently approved by
24 the DNA Commission on Forensic Science. And I believe we
25 starting use the Forensic Statistical Tool in our lab in around

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1 July 2012.

2 Q. So you used the FST plug-in the data and it spits out that
3 likelihood ratio that we just talked?

4 A. That's correct. However, the likelihood ratio is a
5 statistic that is used in paternity testing and it's also used
6 not with using the Forensics Statistical Tool but it's the
7 likelihood ratio is also used in other forensic labs across the
8 country and in other countries in fact.

9 Q. Now, if you recall I asked you a few questions earlier and
10 you answered you were talking about the topic of your
11 determination that there were at least three contributors to
12 the mixture of DNA found on the glove and why it wasn't two or
13 why it wasn't four. Do you recall that colloquy between you
14 and me?

15 A. I do.

16 Q. And tell us again, is that a decision made just by you?

17 A. This is a decision I made but I used the standards put
18 forth by our laboratory in determining how many contributors
19 are in the mixture.

20 Q. What, if any, effect would finding more there than three
21 contributors have to the use of FST?

22 A. If I deem that this mixture had more than three
23 contributors I would have deemed them inconclusive and I would
24 have not performed the FST on the sample.

25 Q. Based on the standard set forth by the OCM?

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1 A. That's correct.

2 Q. And that's what we were getting into earlier when I asked
3 you if there was another lab that could test it?

4 A. They could but it depends on what their policies are.

5 Q. Policies and protocols?

6 A. That's correct.

7 Q. Is that the situation here? Are there more than three?

8 A. I said at least three individuals.

9 Q. OK. That is your finding?

10 A. That's correct.

11 Q. OK. Very quickly I want to talk about secondary touch or
12 secondary transfer. Are you familiar with that term?

13 A. Yes, I am.

14 Q. What is -- are they the same? Do they mean the same thing?

15 A. So primary transfer of DNA means that you touched an item
16 and transferred your DNA to that item. Secondary transfers is
17 when you don't touch that item. So it's DNA is transferred
18 through an intermediate source. So either you come in contact
19 with another person and then that person touches the item and
20 transfers your DNA to the item or you come in contact with the
21 object and that object comes in contact with another object.

22 Q. OK. So what would have had to happen if we were to find
23 this was secondary touch or secondary transfer what would have
24 had to happen in this case in order for Mr. Delva's DNA to
25 appear on that glove?

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1 A. So, there could be many different scenarios that could
2 happen. In my opinion secondary transfer of DNA even though
3 it's something that's possible you could possibly find another
4 person's DNA through secondary transfers, it's something that's
5 very unlikely. So, for example, let's say you shake someone's
6 hand and then that person will touch an object and that's how
7 your DNA gets on the object, but there has to be different
8 circumstances in order for that to happen and this why that's
9 unlikely. So, if you touch someone's hand that person most
10 likely would have to touch that object immediately or not touch
11 anything else in order to transfer your DNA. But let's say
12 that person touches your hand and then rubs his pants, rubs his
13 face, ten minutes passes and then they touch the object. It's
14 very, very unlikely that they would transfer your DNA to that
15 object.

16 Q. Have you done any readings on this?

17 A. I have briefly. There's articles on secondary transfer but
18 a lot of these experiments requirements are done in controlled
19 laboratory setting in which maybe they would touch someone for
20 one minute and then let five minutes past and then touch the
21 item. So this is done in a controlled laboratory setting where
22 someone is probably not likely touching themselves or another
23 item and just standing there.

24 Q. So I would have to touch some part of your face or your
25 hand for more than a brief second. I would have to hold your

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1 hand and shake your hand for a good minute. I'm not saying
2 minute is timing but not a touch like this. It's a momentary
3 touch. It's a, I am touching your face or I am touching your
4 hand in order to even get the DNA on our hands; is that what
5 you are saying?

6 A. That's the most likely scenario. I mean, you could touch
7 someone for a second and get DNA on it. It's not likely. It
8 is just like if you touch something for a second. Most likely
9 we're not going to get enough DNA to go on with further DNA
10 testing. The same is if you touch someone you probably would
11 have to make a good contact with them in order to transfer DNA
12 and then that person would have to pretty much either not
13 immediately but not touch anything else and then touch another
14 object to transfer your DNA. So that's why secondary transfer
15 of DNA is something that's very highly unlikely.

16 Q. Two other questions and then one question about your
17 conclusion. Throughout this process that you are testing the,
18 all the DNA that you've talked about, do you yourselves -- do
19 you yourself wear gloves?

20 A. When we examine evidence and do any testing in the
21 laboratory we wear personal protective equipment and this is to
22 prevent contamination by us onto an item of evidence and also
23 protect us from getting any, touching the evidence and getting
24 maybe any blood born pathogens that might be on the evidence.
25 So what we wear is a hairnet, a mask that covers our face, nose

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1 and mouth. We wear gloves. Sometimes we double glove and we
2 wear a lab coat and sometimes booties. And this is done for
3 every testing that we do in the lab.

4 Q. The amount of DNA that was found here, would that make
5 secondary touch unlikely?

6 A. I really couldn't say. I can't tell if it's secondary
7 touch. But again something that's secondary touch is something
8 that's highly unlikely compared to a primary touch.

9 Q. Two other questions. One, what kind of glove did you
10 examine. I don't think we asked that you question?

11 A. So the piece of evidence, the swabs of the glove, we
12 examined a latex glove. And what we did to when we examined
13 the glove is we swab the glove with swabs that is made in our
14 lab and put in a solution and then we swab it. So we hold the
15 swabs with the pair of tweezers and gently swab the glove. And
16 in this case we used four swabs and we swabbed both sides of
17 the glove.

18 MR. POSCABLO: OK.

19 THE COURT: When you say "both sides" do you mean the
20 front and back or do you mean the inside and outside?

21 THE WITNESS: Front, back, inside and outside.

22 Q. OK. So finally, turning your attention to Government
23 Exhibit 1003 with regards to the testing of that, Mr. Delva's,
24 the comparison of Mr. Delva's DNA versus the DNA that's found
25 on that glove, on that latex glove, what is your expert

E9AAADEL3

Cooke - Direct

1 opinion? What is your finding?

2 THE WITNESS: Your Honor, may I refer to the report?

3 THE COURT: Yes.

4 A. OK. So based on the comparison of the DNA profile of David
5 Delva to the mixture found on the sample of the swabs of the
6 glove, he cannot be ruled out as a contributor. Therefore, a
7 likelihood ratio was calculated. The DNA mixture found on the
8 swabs of the glove is approximately 4.42 million times more
9 probable if the sample originated from David Delva and two
10 unknown, unrelated persons than if it was originated from three
11 unknown, unrelated person. Therefore, there is very strong
12 support that David Delva and two unknown, unrelated persons
13 contributed to this mixture rather than three unknown unrelated
14 persons.

15 MR. POSCABLO: One moment, your Honor?

16 THE COURT: Yes.

17 MR. POSCABLO: No further questions, your Honor.

18 THE COURT: All right. Thank you.

19 Mr. Pittell.

20 CROSS-EXAMINATION

21 BY MR. PITTELL:

22 Q. Good morning, Ms. Cooke.

23 A. Good morning.

24 Q. My name is Jeffrey Pittell. We've never met before; is
25 that correct?

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Cooke - Cross

1 A. That is correct.

2 Q. I'd actually like to pick up to some of the things that you
3 said at the end of your testimony. You just told us that the
4 glove was swabbed four times; is that correct?

5 A. We used four swabs total. So probably one swab for the
6 front, one swab from the back and then we on the other side of
7 glove or inside or outside of the glove, one again, one side
8 for the front, one side for the back. All four swabs were
9 placed in one tube.

10 Q. I am just simply asking you a yes or no question. Was the
11 glove swabbed four times?

12 A. Yes, with four swab swabs.

13 Q. Was it swabbed by you?

14 A. No, it was not.

15 Q. Were you present when it was swabbed?

16 A. I was not.

17 Q. Within your file there is there a documentation which
18 indicates that it was swabbed once on the outside and once on
19 the inside and once on the front and once in the back?

20 A. No. It just states that four swabs were used.

21 Q. So you don't have any personal knowledge of the locations
22 from when those four swabs were taken; is that correct?

23 A. It said in the notes that four swabs were used to swab both
24 the inside in quotations and the outside in quotations of the
25 glove.

E9AAADEL3

Cooke - Cross

1 Q. So we don't -- so you are just assuming that when it says
2 "inside" that that's referring to inside the glove as opposed
3 to top and bottom of the glove?

4 A. That's what I am inferring from the notes, yes.

5 Q. And so then you don't know whether it was swabbed when it
6 was done on the outside whether or not it was done once on the
7 top and once on the bottom?

8 A. I do not know for sure.

9 Q. And then according to the notes, after those four swabs
10 were taken whatever was found from the swabs or lifted from the
11 swabs was all combined into one sample; is that correct?

12 A. That's correct.

13 Q. So the DNA that was in that sample because of the combining
14 process there's no way of knowing whether the DNA was all from
15 the inside or all from the outside; is that correct?

16 A. That's correct. But we wouldn't know from the nature of
17 the item because there was a latex glove which side was the
18 inside and which side was the outside.

19 Q. All right. But you don't know whether or not it was from
20 the inside or from the outside because it's all been combined;
21 is that correct?

22 A. That's correct.

23 Q. So it all could have been on the outside?

24 A. From where the DNA came from?

25 Q. Yes?

E9AAADEL3

Cooke - Cross

1 A. Yeah, that's correct, we do not know.

2 Q. Or it could also have been from the, all from the inside?

3 A. That's correct.

4 Q. Or it could have been a combination of both, a mixture of
5 the inside and the outside?

6 A. That's correct.

7 Q. All right. You told us some thing about secondary transfer
8 and you indicated that it is very unlikely in this particular
9 case; is that correct?

10 A. That's very unlikely in general. I couldn't tell by this
11 specific case.

12 Q. So when you say that's very unlikely you are just giving
13 your general opinion on secondary transfer, not specifically
14 this case?

15 A. That's correct.

16 Q. And you indicated that what you know about it is just
17 things that you've briefly read about it; is that correct?

18 A. That's correct in literature.

19 Q. And you've mentioned some controlled studies but I take it
20 you've never been involved in any of those controlled studies?

21 A. That's correct.

22 Q. And you indicated that DNA occurs when one person comes in
23 contact with another person's DNA; is that correct?

24 A. I am sorry?

25 Q. Secondary transfers?

E9AAADEL3

Cooke - Cross

1 A. Secondary transfer?

2 Q. Yes.

3 A. Secondary transfer is when you don't come into contact with
4 the item but on your own there is an intermediary so either a
5 person or object transfers your DNA to another item.

6 Q. So, for example, if I shake someone's hand I could pick up
7 their DNA from my hand and then if I can pick up a knife I
8 could transfer their DNA to the knife?

9 A. Yes, that's possible.

10 Q. And in that instance the person whose hand I shook, their
11 DNA would be on the knife but they never touched the knife?

12 A. That's correct.

13 Q. And, in fact, I could shake a person's hand out in the
14 street, go to a crime scene, pick up a knife and put their DNA
15 on that knife in the crime scene?

16 A. That's something that's possible but, again, unlikely.

17 Q. OK. Well, I am just -- all the questions I am asking at
18 this point whether or not it's possible or not.

19 A. OK.

20 Q. You would agree it's possible?

21 A. Yes.

22 Q. And you said that touch DNA comes from the human skin; is
23 that correct?

24 A. That's correct.

25 Q. And do people shed their skin cells naturally?

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Cooke - Cross

1 A. Yes, they do.

2 Q. And how many skin cells, if you know, does the average
3 person shed everyday?

4 A. It's a lot. I couldn't tell you offhand.

5 Q. Is it like hundreds of thousands, millions?

6 A. I believe it's over a hundred thousand.

7 Q. And when they shed their skin cell if they touch things
8 their skin cells will shed off onto those items; is that
9 correct?

10 A. That's correct.

11 Q. So like when I touch this podium my skin cells could be
12 shedding and going on this podium?

13 A. Yes, it can.

14 Q. And my skin cells could be all over this table here?

15 A. That's correct.

16 Q. And these notes? And then if someone else, another
17 attorney comes up to this podium, puts their hand on this
18 podium after I've touched it they could pick up my skin cells?

19 A. Again, that's something that's possible.

20 Q. And then if they go somewhere else and let's say they go to
21 another courtroom and touch another podium they could plant my
22 skin cells on that podium in that other courtroom?

23 A. That's something that's possible.

24 Q. Now, in this particular case are you aware of the fact that
25 Mr. Delva lived a few blocks away from the apartment where the

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Cooke - Cross

1 crime occurred?

2 A. I do not.

3 Q. You were you aware that Mr. Delva lived a few blocks from
4 the apartment where the latex glove that you examined was
5 found?

6 A. I did not.

7 Q. Were you aware of the fact that Mr. Delva lived with a man
8 by the name of Gregory Accilien?

9 MR. POSCABLO: Objection, your Honor.

10 THE COURT: Overruled.

11 Q. Were you aware that Mr. Delva lived with a man by the name
12 of Gregory Accilien together in the same apartment a few blocks
13 away from the crime scene?

14 A. I did not.

15 Q. Have you ever heard the name Gregory Accilien at all in
16 your analysis in this particular case?

17 A. I have not.

18 Q. Have you done a DNA profile of Gregory Accilien?

19 A. I did not.

20 Q. Have you compared Gregory Accilien's DNA to any of the
21 items in this case?

22 A. I have not.

23 Q. So you did not compare it to the mixture that was found on
24 the latex glove in this case?

25 A. I did not.

E9AAADEL3

Cooke - Cross

1 Q. And I take it you are not aware that Gregory Accilien is
2 the uncle of David Delva?

3 A. I am not.

4 Q. And you are not aware that they are blood related?

5 A. I am not.

6 Q. All right. So, if David Delva is living in an apartment
7 which is a few blocks away from the crime scene or -- actually,
8 let me withdraw the question. So you would agree that David
9 Delva in his day-to-day life in his apartment is shedding skin
10 cells all over the apartment?

11 A. Yes.

12 Q. His skin cells are going to be in the bed that he sleeps
13 in?

14 A. That's correct.

15 Q. His skin cells are going to be on chairs in the apartment?

16 A. That's correct.

17 Q. Assuming he touches or sits in the chairs?

18 A. That's correct.

19 Q. If he walks around barefoot his skin cells will be on
20 flooring of the apartment?

21 A. These are all possible.

22 Q. His skin cells could be on clothing in his closet?

23 A. Yes, it could be.

24 Q. Door handles?

25 A. Yes.

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Cooke - Cross

1 Q. Tables?

2 A. That's correct.

3 Q. Furniture?

4 A. Yes.

5 Q. So his skin cells could be pretty much every where in the
6 apartment?

7 A. Yes.

8 Q. And if Mr. Accilien is also living in that apartment
9 Mr. Accilien can touch let's say a doorknob and if he touches a
10 doorknob that had been touched by his nephew, Mr. Accilien can
11 pick up some of the skin cells of Mr. Delva?

12 A. He can. That's possible.

13 Q. And if Mr. Accilien went from his apartment where he shared
14 with Mr. Delva to the crime scene, he could have very well
15 transferred some of Mr. Delva's DNA to the crime scene?

16 A. Again, that's something that's possible but in my opinion
17 secondary transfers is unlikely.

18 Q. OK. Well, but I am talking about in this particular case.
19 You would agree that is possible that if Mr. Accilien one time
20 went from the apartment that he shared with Mr. Delva to the
21 crime scene a few blocks away that Mr. Accilien could have
22 transferred some of Mr. Delva's DNA to the crime scene?

23 A. That is something that could be possible.

24 Q. And when Mr. Accilien got to that crime scene, if he stuck
25 his hand in a box which contained latex gloves he could have

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Cooke - Cross

1 transferred Mr. Delva's DNA to the latex gloves which were in
2 that box?

3 A. Again, that's something that's possible but I believe
4 that's highly unlikely.

5 Q. And would you agree that -- I realize you say it's possible
6 but it's highly unlikely but would you agree that if
7 Mr. Accilien went in the course of one day went from his
8 apartment with Mr. Delva to the crime scene that there's some
9 possibility that he transferred DNA to the crime scene?

10 A. There's some possibility but, again, something in my
11 opinion when you are going from one place to another you are
12 going to be touching many things in between. So when you
13 finally touch that object the likelihood of transferring DNA to
14 that actual object would be unlikely.

15 Q. I am just asking you you would agree though that if
16 Mr. Accilien made at least one trip from his apartment to a
17 crime scene a few blocks away that there is some possibility no
18 matter how many that he transferred some of Mr. Delva's DNA to
19 the crime scene?

20 A. Yes.

21 Q. And in a few hours later Mr. Accilien made a second trip
22 from the apartment that he shared with Mr. Delva to an
23 apartment to the crime scene that the possibility of the
24 transfer of Mr. Delva's DNA to the crime scene would have at
25 least increased a little bit, is that correct, because now we

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Cooke - Cross

1 have two trips instead of one?

2 A. I guess that's possibility.

3 Q. And then if Mr. Accilien made a third trip from an
4 apartment that he shared with Mr. Delva to the crime scene that
5 this possibility would increase a little bit more?

6 A. I guess it depends on the circumstances.

7 Q. Certainly. Then if Mr. Accilien made a fourth trip from
8 the apartment that he shared with Mr. Delva to the crime scene
9 the possibility would increase a little bit more; is that
10 correct?

11 A. I guess depending on the circumstances again.

12 Q. And now, you indicated that or you indicated that you did
13 some analysis of DNA of someone by the name of Trevor Cole?

14 A. That's correct.

15 Q. Now, if Trevor Cole was in Mr. Delva's apartment and went
16 from that apartment to the crime scene there's a possibility
17 that Mr. Cole could have also transferred some of Mr. Delva's
18 DNA to the crime scene?

19 A. Again, that's something that is possible.

20 Q. And you also did a DNA analysis of someone by the name of
21 Dominique Philippe?

22 A. That's correct.

23 Q. And if Mr. Philippe also went from Mr. Delva's apartment to
24 the crime scene it's also possible that he could have
25 transferred some of Mr. Delva's DNA to the crime scene?

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Cooke - Cross

1 A. Yes, that's a possibility.

2 Q. Now, do substances at all affect or can substances affect
3 the secondary transfer of DNA? Let me give you an example. If
4 I have -- let's say I take a piece of tape and I put tape on
5 this podium and then pull it up is because this tape has the
6 stickiness or tackiness to it, is there a possibility that it
7 could pick up more DNA from this than if let's say I touch it
8 with my hand and my hand just picks up DNA?

9 A. I wouldn't know. I've never done testing like that but I
10 mean I think either way it would transfer that's possible that
11 the tape would pick up more cells. I wouldn't know.

12 Q. You would agree based upon your education, your formal
13 college education, the continuing training that you have had,
14 the seminars you've attended, that it's a fair opinion that
15 something that's sticky is going to pick up more DNA than
16 something that's not very sticky?

17 A. Sure.

18 Q. And likewise if somebody eats chicken wings and the wings
19 have a sticky sauce there's a possibility that with the sauce
20 in their hands if they touch things in an apartment they might
21 pick up more DNA than if their hands were clean and they had no
22 sticky sauce on them?

23 A. I would agree with the tape. I am not sure about the
24 sauce. I don't know how that would affect picking up DNA and
25 testing DNA for something that was that sticky.

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Cooke - Cross

1 Q. All right. You told us about the testing procedures which
2 are used in your laboratory. I think they were called the
3 rotation. Is that the proper term for the steps of DNA
4 analysis?

5 A. The rotation system is what we use in our lab for how each
6 item of evidence is tested. The steps in our lab is examining
7 evidence extraction.

8 Q. It's what -- I want to go I just want to make sure I have
9 the term right. So it's called a rotation system; is that
10 what?

11 A. The rotation system isn't what the steps that we perform on
12 each item. It's in general how evidence moves through our lab.

13 Q. OK. And that is first -- I just want to make sure that my
14 understanding is correct from what you told us earlier so to
15 the extent I am repeating anything, I apologize. You indicated
16 that you, the lab first receives an item; is that correct?

17 A. That's correct.

18 (Continued on next page)

19
20
21
22
23
24
25

E9a1del4

Cooke - cross

1 BY MR. PITTELL:

2 Q. And then you said it was examined for DNA.

3 A. Correct. The next step after we receive an item of
4 evidence, it's locked in storage until an analyst picks it up
5 to examine.

6 Q. And is that examination, is that a visual examination?

7 A. The first step is a visual examination. We want to examine
8 the item, see if there's any staining on it, see where we want
9 to test it. It depends on the nature of the item.

10 Q. All right. So it's just basically looking at it. Some
11 things may be obvious. If it's a bloody piece of tissue, it
12 would be obvious that there was blood on the tissue, I take it?

13 A. Correct. If we see a reddish-brown stain, then we do
14 further testing to test if it's possibly blood.

15 Q. And then, but something like a glove, which if it only has
16 touch DNA, whatever's there is not necessarily going to be
17 visible to the naked eye.

18 A. That's correct.

19 Q. And so is the next step in the process extraction?

20 A. That's correct.

21 Q. Is that the swabbing, in this case, the swabbing of the
22 glove the extraction process?

23 A. No. When we're examining the item, that's when we swab the
24 glove. So in our policy, if we don't -- if it's touch DNA, we
25 don't know where the DNA is, we would swab the entire item that

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Cooke - cross

1 would be touched. And then we would submit those swabs for
2 further testing. And that is -- the next step is extraction.

3 Q. Okay. So the swabbing was a part of the examination step.

4 A. That's correct.

5 Q. Then the next step is extraction?

6 A. Yes.

7 Q. And then after that, it's quantification?

8 A. Quantitation, yes.

9 Q. Oh, sorry. Quantitation. And that's where you determine
10 the amount of DNA which is available.

11 A. That's correct, in the sample.

12 Q. All right. And then we have amplification?

13 A. Yes. So if a sample has enough DNA to go on with further
14 testing, the next step would be amplification.

15 Q. And then after amplification, what's the name of the next
16 step after that?

17 A. We do something that's called capillary electrophoresis,
18 and in this step is where we separate out the many copies we
19 need.

20 Q. I'm sorry, I don't mean to cut you off, but I'm just asking
21 you the name of the step.

22 A. Okay.

23 Q. So that one's called capillary. And then the final step is
24 the analyzing of the results and writing the report.

25 A. That's correct.

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Cooke - cross

1 Q. Now in this particular case did you receive the items?

2 A. Did I?

3 Q. Yes.

4 A. Myself?

5 Q. Yes.

6 A. In this particular case, in our rotation system, another
7 analyst picked up the case and examined the evidence, and then
8 it was submitted for the next step and another person would do
9 an extraction.

10 Q. Okay. So I just want to go through these step by step and
11 find out who did what.

12 A. Okay.

13 Q. Do you know who received the item?

14 A. The person who did the examination and all the evidence,
15 excluding the elimination samples, was Helen Wong.

16 Q. I'm sorry. Could you say the name again, please?

17 A. Her name is Helen Wong.

18 MR. POSCABLO: Judge, could we just get clarification
19 about which item or items Mr. Pittell is talking about.

20 THE COURT: Yes.

21 MR. PITTELL: Very good point. I'm referring to the
22 latex glove.

23 A. In this case it was Helen Wong.

24 Q. So Helen Wong did the examination. Who did the extraction?

25 A. I would need to look and refer to my notes to --

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Cooke - cross

1 Q. Do you have them in front of you?

2 A. I do not.

3 Q. Oh. Do you know if they're in the courtroom or if they're
4 in any of the trial exhibits?

5 A. I know I have a certified copy in my bag.

6 MR. POSCABLO: We have no objection to her looking,
7 Judge.

8 THE COURT: All right. Do we have her bag?

9 MR. POSCABLO: May I approach, your Honor?

10 THE COURT: Yes, you may.

11 (Pause)

12 THE WITNESS: May I refer to my notes?

13 THE COURT: Yes, you may.

14 MR. POSCABLO: Judge, may I just approach and grab our
15 exhibits so that they don't get mixed up?

16 THE COURT: Sure.

17 (Pause)

18 THE COURT: While you're doing that, ladies and
19 gentlemen, I'll just give you a sense of our timing. We will
20 break again at 12:45 for lunch, unless something comes up as it
21 did yesterday and we broke a little early, but normally it
22 would be 12:45.

23 MR. PITTELL: Judge, while she's looking at her notes,
24 could we just have a brief sidebar, do two things at once?

25 THE COURT: All right. We'll make it brief.

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Cooke - cross

1 (At the sidebar)

2 MR. PITTELL: I don't think this is an issue that's
3 going to be a bone of contention, but the file that she's
4 looking at, that she's referring to as her case notes, that's
5 like the glove file. The one that's in evidence is the Delva
6 file. There will be some documents in that that I think my
7 expert may rely upon. I don't want to bother to start putting
8 them in evidence through her, her certified copy. I just want
9 to make sure that there's not going to be any problem with me
10 trying to put them in through my expert. I mean, just --

11 THE COURT: Why don't you ask her, are these the notes
12 that you were referring to, can you identify them, yes, they
13 were, are these the certified copy, yes, they were. If you do
14 that, you've got the foundation for authentication at that
15 point and later, if you want to refer back to them, we'll deal
16 with it then, but --

17 MR. PITTELL: The thing is, the file that's the glove,
18 or that's the glove file, it's a large file. I don't even have
19 a marked copy file. That's how I know it's probably what she's
20 looking at because it's several hundred pages thick because it
21 includes all the evidence, all the evidence in this case.

22 THE COURT: You can ask her to authenticate it and
23 we'll deal with it at a break.

24 MR. PITTELL: That's fine.
25

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Cooke - cross

1 (In open court)

2 THE COURT: All right. Mr. Pittell, we're ready for
3 you.

4 BY MR. PITTELL:

5 Q. So, Ms. Cooke, do you know who did the extraction?

6 A. Yes. Karen Bodden, B-O-D-D-E-N.

7 Q. Then do you know who did the quantitation?

8 A. Yes. His name was Michael Kuhn, K-U-H-N.

9 Q. Do you know who did amplification?

10 A. The first amplification was done by Helen Wong, and the
11 duplicate amplification was done by Patrick Carney,
12 C-A-R-N-E-Y.

13 Q. And just so we're clear, I'm going to hold up Government
14 Exhibit 1000-A, or 1003-A and 1003-R.

15 MR. PITTELL: I don't know if everybody can see.

16 Q. So is this line that I'm pointing to, the fifth line on the
17 chart, the first one that has circles. Is that the first
18 amplification?

19 A. That's correct.

20 Q. And then the one below it, that also has some blue circles,
21 that's the duplicate amplification?

22 A. That's correct.

23 Q. Now moving on to the next step, capillary, do you know who
24 performed that step?

25 A. The first capillary electrophoresis was done by Kendra

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Cooke - cross

1 Hardy, H-A-R-D-Y.

2 Q. And the second one?

3 A. Louie Vele, V-E-L-E.

4 Q. And was there another one after that?

5 A. There was analysis done. The first analysis was done by
6 Kendra Hardy and reviewed by Beatrice Noel, N-O-E-L. And the
7 second one was done by Louie Vele and was reviewed by Samantha
8 Rappa-Giovagnoli, R-A-P-P-A - G-I-O-V-A-G-N-O-L-I.

9 Q. And then what's the next step after the analysis? Is that
10 when you wrote the report?

11 A. For that particular sample, then I analyzed all -- I went
12 over all these tests, analyzed it, and then wrote the report.

13 Q. Now in order to give me all those names, you were looking
14 at a file and some documents that you have in front of you, is
15 that correct?

16 A. That's correct.

17 Q. And so going back to the first step, examination, did Helen
18 Wong prepare some kind of report or paperwork documenting her
19 examination?

20 A. That's correct.

21 Q. And then I'm just going to say the last names because I
22 don't remember all the first names. I only have an initial.

23 A. Okay.

24 Q. Then when Bodden did the extractions, did Bodden also
25 prepare some kind of paperwork?

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Cooke - cross

1 A. Yes, she did.

2 Q. And when Kuhn did a quantification, did Kuhn prepare
3 paperwork?

4 A. Yes.

5 Q. And then on the amplification by Wong, I take it there was
6 paperwork for that?

7 A. That's correct.

8 Q. And then for the duplicate amplification by Carney, there
9 was other paperwork.

10 A. That's correct.

11 Q. Same thing for capillary, which there were two different
12 persons, Hardy and Vele, doing it. Did each one prepare their
13 own paperwork?

14 A. That's correct.

15 Q. Then we get to the analysis. First there was one done by
16 Hardy, which was reviewed by somebody. There was paperwork for
17 that?

18 A. That's correct.

19 Q. And then again the analysis was done by Hardy but reviewed
20 by somebody else.

21 A. I think it was Vele and then reviewed by someone else, the
22 second one.

23 Q. All right. And so all of these items involved some actual
24 testing of the object or item removed from the object or the
25 DNA itself, is that correct?

E9aldel4

Cooke - cross

1 A. That's correct.

2 Q. Now when it came to you, the physical testing part was
3 finished.

4 A. That's correct.

5 Q. And what you did was you looked at all of this paperwork
6 that we just went over, and based upon the paperwork, you wrote
7 your report?

8 A. That's correct. So I went over all the paperwork, I had to
9 agree with the findings, and then I made my analysis and wrote
10 the report.

11 Q. You had mentioned there was a computer program, FST
12 program. Was that something you did or did somebody else do
13 the FST?

14 A. This is in a different file. This was in the file in which
15 we created David Delva's profile, but I created -- or I did the
16 FST on my own.

17 Q. So all these steps that I went through, the examination,
18 extraction, quantitation, amplification, and duplicate
19 amplification, capillary, analysis one and two, you were not
20 present for any of those, is that correct?

21 A. For the sample for the swab of the glove, that's correct.
22 I believe I did do some of the analysis on some of the other
23 items in this case.

24 Q. But as far as the glove that we've been talking about and
25 that's the subject of the comparison with Mr. Delva, you were

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Cooke - cross

1 not present for any of the scientific testing of the glove or
2 what was extracted off the glove.

3 A. That's correct.

4 Q. So I take it that you did not watch or supervise all these
5 names that I went through, all these people conducting their
6 tests.

7 A. That's correct. But we all follow the same standard
8 operating procedures in the lab for each of these tests and we
9 all go through the same training for these procedures.

10 Q. All right. But you would agree that no matter how much
11 training people have, people can make mistakes?

12 A. People can make mistakes, but in the nature of how many, in
13 our rotation system, I have to believe that there were no
14 mistakes made and that I trust my coworkers.

15 Q. But that is only your belief and your assumption, is that
16 correct?

17 A. That's correct. But again, all these people go through the
18 same training and pass the same proficiency test in order to do
19 these tests in the lab.

20 Q. But in any field of science, no matter how much training
21 people have, no matter how many proficiency tests they pass,
22 there is something called human error and people can make
23 mistakes, wouldn't you agree with that?

24 A. That's correct, but that's why, in these tests, we do run
25 controls and that's why we run the duplicate amplifications to

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Cooke - cross

1 catch any of these mistakes.

2 Q. But there was no duplicate testing -- there was no
3 duplication done in the extraction phase, was there? It was
4 only done one time.

5 A. There can't be any duplicate testing in the extraction
6 phase because we have one sample and we can't do it twice.

7 Q. So there was only one taking of a sample from the glove, is
8 that correct?

9 A. That's correct, and it was consumed.

10 Q. And when you say consumed, you mean it no longer exists.

11 A. So when we swab the glove, and we use all those swabs and
12 put it into the sample, we're saying that all those swabs were
13 consumed, and potentially we took all the DNA off of the glove
14 because we swabbed the entire glove.

15 Q. So when you say consumed, those swabs being consumed, that
16 means that there's no way I could take those swabs and do my
17 own testing of those swabs because they've been consumed.

18 A. Well, we have the original extract of the DNA in our lab
19 from the glove, so if you wanted to do DNA testing, you could
20 do it from that extract.

21 Q. Okay. But getting back to your being present for all this
22 testing, so you do not have any personal knowledge whether or
23 not any of these people along the steps of the way of the
24 testing made any errors.

25 A. I was not present, no.

E9aldel4

Cooke - cross

1 Q. So you can only assume that no errors were made.

2 A. That's correct. But again, that's why we have controls and
3 duplicate samples, so we can catch any -- potentially catch any
4 sample -- or errors that are made.

5 Q. Well, are you saying that your lab is perfect and that all
6 errors always get caught and your lab could never be wrong?

7 A. I am not saying that.

8 Q. Okay. Ms. Cooke, you had said 20 picograms per microliter
9 is a threshold, is that correct?

10 A. That's correct. So our lab is validated, so during a
11 validation, we determine how much DNA to go on with further
12 testing and we want to choose an amount that we know is more
13 robust and reliable than, so our lab determined that anything
14 less than 20 picograms, the results may not be as robust and
15 reliable if it's 20 picograms or over.

16 Q. Okay. So let me just ask a couple follow-up questions on
17 that. So in the steps of the process that I've gone through
18 with you, at which step is the determination of the number of
19 picograms there would be in an extracted DNA sample?

20 A. That would be quantitation.

21 Q. So in this particular case, after the DNA was extracted
22 from the swabs on the glove, then there was some quantitation
23 done from those extractions.

24 A. From that extraction, yes.

25 Q. And in any case, you're saying when the DNA sample is

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Cooke - cross

1 analyzed by your lab, the first step is to determine quantity,
2 and under your lab standards, it has to be at least 20
3 picograms to be suitable for analysis.

4 A. Suitable for it to go on with further testing.

5 Q. But I believe you had said that the ideal amount is a
6 hundred or more, is that correct?

7 A. That's correct. In the literature, the ideal amount to go
8 on for testing is a hundred, but our lab validated that
9 anything over 20 is suitable to go on.

10 Q. So I take it if there is an ideal threshold being a
11 hundred, then the range between 20 and a hundred is suitable
12 but less than ideal.

13 A. I mean, I guess -- it's suitable, but the -- for the
14 testing, for the reagents, the kits state that a hundred
15 picograms is the target you want to shoot for.

16 Q. But you had used the term a hundred or more is ideal. So
17 if it's less than a hundred, you would agree that it's not a
18 hundred percent ideal; it's still suitable but it's not fully
19 ideal?

20 A. I mean, I guess you could say that, but our lab determined
21 that anything over 20 will be something that could be repeated
22 and reliable, and that's what we use in our lab.

23 Q. Also, sometimes, instead of being measured in picograms, is
24 DNA also measured in nanograms?

25 A. Yes. It's just the scientific factor how much it is. I

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Cooke - cross

1 think it's a thousand picograms per nanogram.

2 Q. And so what would the ideal amount of nanograms be? If a
3 hundred is the ideal picograms, then is a nanogram a thousand
4 times a hundred?

5 A. Well, it would be .1 nanograms, I believe, if I'm doing the
6 math right.

7 Q. All right. Now in this particular case, you indicated that
8 I believe it was approximately 31 picograms on the glove, is
9 that correct?

10 A. That's correct. I could check my notes if you would like.

11 Q. Okay. If you could check, I'll check mine too.

12 A. (Witness complies.) It was exactly 31.35 picograms per
13 microliter.

14 Q. 31-point -- I'm sorry?

15 A. 35.

16 Q. Okay. So it's over the 20 threshold but it's closer to 20
17 than it is to 100, obviously.

18 A. That's correct.

19 Q. Now do you know by any chance if -- well, if we have a
20 hundred picograms of skin source DNA, do you know how many skin
21 cells that actually is?

22 A. So if there's about 7 picograms of DNA -- I think it's just
23 over 7 per cell of DNA -- so you're going per microliter in the
24 sample. So there's 31.35 picograms per microliter. I believe
25 in this test there is about 20 microliters total, so there is

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Cooke - cross

1 just under 5 cells per microliter, so 5 times 20 is about a
2 hundred cells, maybe, per sample, give or take.

3 Q. And so it would be 5 times 20, which is a hundred, then
4 times 31, to determine the number of cells?

5 A. Well, no. So there is 31.35 picograms per microliter in
6 the sample. There's about 20 microliters in the sample. So if
7 there's 7 picograms per cell, so 7 divided by 31 is just under
8 5 cells of DNA in the sample. No, sorry. Wait. So there's
9 just under 5 cells of DNA per microliter, so if there's 20
10 microliters, 5 times 20 is about a hundred.

11 Q. So there's about a hundred, about a hundred actual cells?

12 A. In the entire sample.

13 Q. The entire sample. And in this case you were able to
14 determine that these were skin cells, is that correct?

15 A. We were not able to determine it was skin cells.

16 Q. Were you able to determine whether or not they were blood
17 cells?

18 A. There was no reddish-brown staining seen on the glove, so
19 when the analyst examined the glove, they did not do any
20 blood -- testing for possible presence of blood.

21 Q. So in your opinion at least it's most likely that it was
22 skin cells.

23 A. That's correct.

24 Q. And the glove contained a mixture of at least three
25 persons.

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Cooke - cross

1 A. Three people, yes.

2 Q. So the hundred skin cells is the total amount of skin cells
3 contributed by however many people contributed to the mixture,
4 is that correct?

5 A. That's correct.

6 Q. Not a hundred from each person who contributed.

7 A. That's correct. Hundred total.

8 Q. And just to do the math easy, let's say there's two people
9 in a mixture and there's a hundred skin cells in the mixture.
10 That doesn't necessarily mean that it's 50 cells from one
11 person and 50 from another person, does it?

12 A. That's correct.

13 Q. In fact, it could be 99 to 1.

14 A. That's correct, but most likely if it was 99 to 1, we
15 wouldn't see that 1, that person in the mixture.

16 Q. Okay. Well, all right. So then adjusting a little, it
17 could be like 80/20.

18 A. Sure.

19 Q. Okay. So just because we have a number of cells in the
20 mixture and a number of people who contributed to the mixture,
21 that doesn't necessarily mean that each person proportionately
22 contributed the same number of cells to the mixture.

23 A. That's correct.

24 Q. And I take it that there was no testing in this particular
25 case to specify the number of cells contributed by each person

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Cooke - cross

1 in the mixture.

2 A. If we're able to determine who's -- let's say if it's a
3 two-person mixture and we're able to -- sometimes we're able to
4 determine a ratio of the amount one person contributes compared
5 to the other, but in this case, since there was at least three
6 people, it was a low amount, we were not able to determine a
7 ratio.

8 Q. Now the target threshold you said of 20 picograms, is that
9 a standard set by your lab or is it a national standard? Where
10 does that come from?

11 A. It's set by our lab. So any tests that we perform in our
12 lab, we do validation for that specific test before we can
13 perform the test in the lab, and these validations ensure that
14 the test we do is robust and reliable, and that's how we set
15 the 20 picograms per microliter standard.

16 Q. And is that set forth somewhere in the policies of your lab
17 or the protocols and standards of your lab?

18 A. That's correct.

19 Q. And where it specifies that, does it specify that that is a
20 standard for a single-source DNA?

21 A. At that point, at that point of testing we wouldn't know if
22 it's single source or not, so we strictly look at the sample,
23 and if it's over -- 20 or over, we go on with further testing.
24 If it's under 20, then we don't.

25 Q. So the standard of 20 applies for single source as well as

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Cooke - cross

1 mixtures.

2 A. That's correct. We don't know if it's a single source or
3 mixture.

4 Q. However, if the mixture contains 20 and the mixture had two
5 or more people, then mathematically, neither person would be
6 contributing 20 to the mixture.

7 A. That's correct.

8 Q. And in this particular case, because we have 31 picograms
9 and we have at least three people contributing to the mixture,
10 and because you indicated that the extreme range mixtures of
11 like 99 to 1 are not realistic, that in this particular case,
12 it's most likely that no one person contributed 20 or more
13 picograms to the mixture.

14 A. We wouldn't know because we can't test that, but this is
15 why, in samples that are mixtures and that are small amounts of
16 DNA, why we see something called allele dropout that I talked
17 about before.

18 Q. But it would be, at least in this case, safe to assume that
19 given that there are at least -- withdrawn.

20 When you say there's at least three contributors to
21 the mixture, is there a possibility that there could be four
22 contributors to the mixture?

23 A. There is a possibility. I wouldn't know.

24 Q. Well, you've used the term at least three. Do you mean to
25 say that it's no more than three or that it's three and could

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Cooke - cross

1 possibly be more?

2 A. That's correct.

3 Q. So it could possibly be more than three.

4 A. That's correct.

5 Q. So in this particular case, would you agree that if there
6 are at least three and possibly more people contributing to the
7 mixture, that realistically, no one person has contributed 20
8 or more to the mixture?

9 A. Yes, that's a possibility.

10 Q. And I think you just said it, but I just want to make sure
11 we're clear. So when we have samples where there is a low
12 amount of DNA, under a hundred but more than 20, because there
13 is a low amount, that's where you'll get things which you
14 showed on the chart, allele dropouts, is that correct?

15 A. That's correct. That's one of the reasons you could have
16 allele dropouts.

17 Q. But like for example here -- I don't know if everybody can
18 see it -- like in the fourth row, we have 12 in each one but we
19 don't have 7 in the bottom row. That's an allele dropout.

20 A. Yes, that's a possible allele dropout.

21 Q. And that could be because of the fact that it's a
22 relatively small amount of DNA.

23 A. Yes. That's one -- relatively small amounts of DNA is one
24 reason why you could have allele dropouts.

25 Q. And what is a partial profile?

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Cooke - cross

1 A. A partial profile is when we don't have the entire profile.
2 So we have 15 locations. Sometimes we -- one location might
3 not -- the alleles from that person or from the evidence might
4 not show up, so then they'll become a partial profile.

5 Q. And partial profiles can sometimes exist in cases where the
6 amount of picos of DNA are low, under a hundred but more than
7 20.

8 A. That's correct.

9 MR. PITTELL: I want to put an exhibit up on the
10 screen.

11 Q. Ms. Cooke, this is one of your reports in this case, is
12 that correct?

13 A. That's correct.

14 Q. And if you could look at the portion at the bottom where it
15 says, "Dominique Jean-Philippe is excluded as a contributor to
16 the mixture of DNA found in the sample listed below." And
17 again, it says "swabs of glove," there's a voucher number, and
18 item number 3. Is that the same glove that you contend you
19 found Mr. Delva's DNA on?

20 A. That's the same glove, yes.

21 Q. And that's actually the same swab -- or no. That's the
22 same glove that was done with the comparison, I should say.

23 A. So the evidence -- the mixture we found is in the evidence
24 file, and then we compared both Dominique Jean-Philippe and
25 then later David Delva to that mixture.

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Cooke - cross

1 Q. All right. Now the exclusion, in order to exclude
2 Dominique Jean-Philippe from the glove, did you use the FST
3 program to compare his profile to the glove mixture?

4 A. I did not.

5 Q. Was a program used?

6 A. No, I did it visually. If I don't see Dominique
7 Jean-Philippe's alleles in multiple locations in the sample,
8 then I will exclude him. When you exclude someone, you don't
9 do FST to that sample.

10 Q. So it was done, for lack of a better term, manually by you,
11 is that correct?

12 A. Yes, visually.

13 Q. Now during the course of your working on this case, were
14 you ever informed that Dominique Jean-Philippe was a blood
15 relative of Mr. Delva?

16 A. I was not. I'm sorry. I might have, in talking to the US
17 attorneys.

18 Q. But because it was a visual examination done by you, you
19 would agree that there is some element of subjectivity that
20 goes into it.

21 A. Well, I compared --

22 MR. POSCABLO: Objection. Just clarifying.

23 THE COURT: I think she can answer. Go ahead.

24 MR. POSCABLO: Okay.

25 A. Well, I compared Dominique Jean-Philippe's profile before I

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Cooke - cross

1 received David Delva's, so I made this conclusion beforehand.
2 So I never compared Dominique Jean-Philippe's profile to David
3 Delva's so I don't know how similar they are.

4 THE COURT: Can I ask you a question. In that chart,
5 which is 1003-A and B, government exhibit, that big chart
6 that's got all of the various columns going across --

7 THE WITNESS: Yes.

8 THE COURT: -- and then you've got the numbers inside
9 those columns --

10 THE WITNESS: Yes.

11 THE COURT: -- are those columns standard for every
12 DNA analysis that do you? In other words, are you looking at
13 the same -- I guess we call them alleles, which is
14 characteristic?

15 THE WITNESS: Okay. So when we do our amplification,
16 we do the same locations, which are standard in our lab and
17 across the country. These are the locations that were tested
18 to be highly variable between individuals.

19 THE COURT: Okay. So I just want to -- I'm sorry.

20 THE WITNESS: Okay.

21 THE COURT: Let me just see if Mr. Poscablo would be
22 kind enough to just put up the -- you can just hold it up. It
23 doesn't matter. You don't have to get it on the screen. So
24 hold it up so I can see it.

25 So you see the columns going across, not where the

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Cooke - cross

1 name is but -- Mr. Poscablo, right there, those.

2 THE WITNESS: Yes.

3 THE COURT: Ladies and gentlemen of the jury, can you
4 folks see that?

5 JURORS: Yes.

6 THE COURT: Those columns are standard columns.

7 THE WITNESS: Yes, those are the standard locations
8 that we always test, and it's also tested across the country
9 and also in Europe.

10 THE COURT: Okay. So when you're testing the DNA
11 sample, because you don't know the name of the person yet,
12 you're looking at whether or not the particular number, like
13 12, appears in the allele.

14 THE WITNESS: So how we get the number 12, so the
15 sample that --

16 THE COURT: Not how you get the number, because the 12
17 I understand. It comes from either the mother or the father.
18 Let's just call that an identifier, okay, just for current
19 purposes.

20 THE WITNESS: Okay.

21 THE COURT: So the number 12, so if that appears in a
22 column, right, that came from somebody, right?

23 THE WITNESS: So for David Delva or let's say the
24 evidence?

25 THE COURT: It can come from --

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Cooke - cross

1 THE WITNESS: Yes, it comes from someone, yeah.

2 THE COURT: It comes from someone. So I just want to
3 get to your visual examination. When you're doing your visual
4 examination, you're looking to see, whoever you're testing it
5 against, whether or not their numbers are showing up enough
6 times. So it's 12, 1, 14, 16?

7 THE WITNESS: Okay. So we compare -- so let's say we
8 have the DNA profile of David Delva and then when we do the
9 comparison, is that what you're talking about, and seeing if
10 the numbers are --

11 THE COURT: I'm actually back at the cigarette butt,
12 back at the elimination. I'm trying to figure out whether or
13 not, with the elimination, when you're doing it visually, I'm
14 trying to figure out if it's really subjective at all or
15 whether or not you're looking at actual numbers in standard
16 columns. Are the columns going across the top standard? Yes?

17 THE WITNESS: Yes.

18 THE COURT: And the numbers that are paired in each
19 column, those are individual. Every individual's got their own
20 DNA, right?

21 THE WITNESS: Yes, yes.

22 THE COURT: None of us in this courtroom have the same
23 DNA, right?

24 THE WITNESS: That's correct.

25 THE COURT: And even people don't have the same DNA as

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Cooke - cross

1 their mother and father or sister and brother.

2 THE WITNESS: Unless you're an identical twin.

3 THE COURT: Right. Unless you're an identical twin.

4 So the DNA of the person in column 1 is 12, 14, 12, 14.

5 THE WITNESS: Okay.

6 THE COURT: What you're doing when you're doing your
7 visual elimination is trying to see if a particular
8 individual's profile shows up in that column.

9 THE WITNESS: Yes. So if an individual is 12, 14, and
10 then I look in that same column for the evidence and see if the
11 12, 14 is in the evidence --

12 THE COURT: And it's nowhere there.

13 THE WITNESS: Let's say it's nowhere there. Then I
14 would probably look at the next column, and nowhere there, and
15 then I might go to the third and see. If it's nowhere there,
16 then I would say exclusion.

17 THE COURT: That's what you're calling your visual
18 elimination.

19 THE WITNESS: That's correct.

20 THE COURT: Thank you. Okay.

21 BY MR. PITTELL:

22 Q. But after looking at all of the data and comparing all of
23 the numbers, the ultimate determination as to whether or not
24 someone should or should not be excluded is a subjective
25 determination.

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Cooke - cross

1 A. That's correct. And when we do those, that's why they're
2 reviewed by a supervisor, and I believe exclusions are -- there
3 would be a second time.

4 Q. But it is possible that other medical examiners offices
5 could look at the same data and come up with a different
6 conclusion?

7 A. I guess that's possible.

8 MR. PITTELL: I'm about ready to go into another line
9 of inquiry, your Honor.

10 THE COURT: All right. Ladies and gentlemen, let's
11 take our lunch break. We will resume promptly at 2. So try to
12 be back and be ready by 2:00. We're going to have a second
13 service of coffee and tea in there for you folks, hopefully
14 with tops this time.

15 I'm going to remind you not to talk to each other or
16 anybody else about this case. Don't do any internet research
17 during the break, in case you have access to a phone or
18 internet device. Don't do any internet research on anything
19 having to do with this case at any point in time until the
20 absolute conclusion.

21 Thank you. We'll see you at 2.

22 THE DEPUTY CLERK: All rise as the jury leaves.

23 (Jury excused)

24 (Continued on next page)

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(Jury not present)

THE COURT: Mr. Pittell, you had something you were about to say?

MR. PITTELL: Me?

THE COURT: Yes. I thought you were about to. Maybe it was to Mr. Poscablo. Okay.

MR. PITTELL: Oh, no. Just in terms of telling Mr. Poscablo like how much more I have.

THE COURT: I was going to ask you the same question. How much more do you have?

MR. PITTELL: I don't really have much more, and in fact, during the break, I'm going to cut out some of the fluff. Not that I would ever put fluff in a cross-examination. But I'm going to try and make it briefer. So I was going to let the government and let the court know that they should just get ready for the next witness.

THE COURT: All right. Mr. Poscablo, at this point how much redirect do you think you have, if any?

MR. POSCABLO: Judge, like five, ten minutes, tops.

THE COURT: All right. So we'll get to the next witness relatively soon. Is that going to be FBI Special Agent Perry or somebody else?

MR. POSCABLO: I think it is. That's our aspirational hope, and I think he's outside, so I think that's going to be our -- he's finished with his testimony in the other case.

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1 THE COURT: All right. And then after that, the
2 thought was to go to Ms. Adams?

3 MR. POSCABLO: That's correct, your Honor.

4 THE COURT: All right. We ought to get there then
5 this afternoon, is that right?

6 MR. POSCABLO: Absolutely.

7 THE COURT: Terrific. Now there was one objection
8 earlier that was: "You knew that the defendant lived two
9 blocks away, or a few blocks away from the crime scene." I
10 think there was a series of questions like that. Why did the
11 government object? I overruled it, but I'm just wondering,
12 because I couldn't see any basis for an objection.

13 MR. POSCABLO: Judge, here's my thinking, that an
14 instruction was necessary at that point -- and I should have
15 been more clear about what I was trying to point to the
16 court -- that a lawyer's question isn't evidence, because it
17 appeared to me that Mr. Pittell was getting in a lot of facts
18 that this witness would not know anything about.

19 THE COURT: But I don't think these are facts which
20 are contested, right? I mean, you folks brought out on direct
21 a number of occasions now how close the two apartment buildings
22 were, etc., etc.

23 MR. POSCABLO: That's correct. No, it's not. So I
24 probably should have withdrawn my objection, but I think your
25 Honor appropriately overruled it.

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1 THE COURT: All right. And, you know, I gave an
2 instruction at the beginning that lawyers' questions are never
3 evidence and nor is anything that I say ever evidence. And
4 I'll be giving that same instruction as part of the jury
5 instructions.

6 Speaking of, you all have received a copy of the big
7 long phone book of jury instructions. Because there are so
8 many counts, they're really quite long. You'll see that I
9 break every page. That's my practice is to do that per
10 instruction. So the bulk really overstates the volume of
11 instructions. Nevertheless, it's long, and it will take some
12 time to deliver. So we'll have to bear that in mind as we
13 proceed. I don't think we're yet at a point where we'll be
14 talking about timing for those. But we'll start going over
15 them tomorrow morning. If you give me some track changes, that
16 would be terrific, but the way that I work is, we'll start off
17 in the morning and I'll ask you, okay, counsel, if I haven't
18 gotten track changes, where's your first proposed change? And
19 if it's on page 32, we'll go right to 32. Time permitting, we
20 would circle back, and I would then return the draft and you
21 would have a second opportunity to review things. But that
22 doesn't always happen. So you ought to review it as if it's
23 your only chance and make any objections that you believe are
24 appropriate. Okay?

25 Anything else that you folks want to raise?

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1 MR. POSCABLO: No, Judge. Thank you.

2 THE COURT: Okay. I do have another criminal matter,
3 it's a multidefendant case, in here at 1:00, so I'll need you
4 folks to just move some things around.

5 MR. POSCABLO: What time did you want us back?

6 THE COURT: Unless you need me, I don't need you back
7 until a few minutes before 2 to get everybody in place.

8 MR. POSCABLO: Yes, your Honor. Thank you.

9 THE COURT: Thank you.

10 THE DEPUTY CLERK: All rise.

11 (Luncheon recess)

12 (Continued on next page)

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Cooke - Cross

AFTERNOON SESSION

2:00 p.m.

THE COURT: Let's get the jurors out here.

(Jury present)

THE COURT: All right. Ladies and gentlemen, let's all be seated.

All right. Mr. Pittell, you may proceed, sir.

MR. PITTELL: Thank you.

Q. Good afternoon, Ms. Cooke.

A. Good afternoon.

Q. Ms. Cooke, I'd like to go back to the chart that's on the easel in front of the jury. It's also up on the screen. It's Exhibit 1003-A. On your direct testimony you pointed out some instances where there were some dropouts on the different loci; is that correct?

A. Yes.

Q. Could you just come down and show us which loci there's either dropouts or I think what you called it an artifact discrepancy?

A. OK. An artifact is different than a dropout. When I brought up artifact I said that there are seven alleles seen in this duplicate here in the first location. And I said that one of the alleles might be an artifact which isn't true DNA coming from one of true individuals or possibly a fourth. In this instance I said it was an artifact because it's not repeated in

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Cooke - Cross

1 the first -- and we don't see any indication of a fourth
2 contributor in any other location. So that's why I said it was
3 a possibility.

4 Q. In loci number two are there allele dropouts on this one?

5 A. It would be possible. We do see possible peaks that aren't
6 called by the software in multiple locations. I would have to
7 look at my raw data to see which one. And it's more likely to
8 come from a larger loci where the DNA is larger. So this would
9 be this one which is CSF1P0.

10 Q. So when you view this there's allele dropouts because
11 there's a seven here but no seven here?

12 A. I view it, when I say allele dropouts it's because we see a
13 possible allele present. It's just too low to be called by our
14 software. So that's why I say there might be allele dropout.

15 Q. Is at least the ones where you know that there are or --
16 can you just mark them by drawing a circle above the loci item
17 number?

18 A. It would be easier for me to look at my raw data than to
19 look at the chart.

20 MR. POSCABLO: Can we clarify what the question is,
21 your Honor?

22 THE COURT: Why don't you -- is there a pending
23 question right now?

24 MR. PITTELL: Well, what I want to ask the witness to
25 do is to identify each loci where there is a discrepancy either

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Cooke - Cross

1 by an artifact stutter or an allele dropout. I thought on
2 direct it could be done by looking at the chart but she's
3 indicated that she needs to look at her data, which is fine.
4 But that's what I am trying to do.

5 THE COURT: All right. So the pending question is can
6 you point out which of the instances where there's a missing
7 allele, if you will, whether it's a likely dropout or a likely
8 artifact; is that the question?

9 MR. PITTELL: Well, just where there is one.

10 THE COURT: All right. So the first thing is, is
11 there a place where there is an allele missing?

12 THE WITNESS: Do you want me do it in respect to David
13 Delva's profile or in respect to where there's dropout, where I
14 see dropout from the data?

15 Q. David Delva's profile from the data.

16 A. OK. I could do that.

17 Q. OK.

18 A. If I am preparing David Delva's profile the data I can do
19 it without looking at my --

20 Q. So if could you just draw a circle around the full loci
21 number.

22 (Pause)

23 Q. You had also indicated that comparing the amplification and
24 the duplicate amplification of the swab of the gloves there's
25 also can be discrepancies between the two?

E9AAADEL5

Cooke - Cross

1 A. That's correct. They are not always going to amplify
2 exactly the same especially with something that has low amount
3 of DNA to start.

4 Q. Right. Those are all the questions I have on that. I
5 guess you can go sit back up there.

6 (Pause)

7 Q. But when you do this. You can look at one on the screen
8 when you do this visual comparison between the David Delva.
9 Actually, let me withdraw the question. You had earlier
10 indicated that when you compared Dominique Jean-Philippe with
11 the glove you did a visual comparison?

12 A. That's correct.

13 Q. Now, is this doing a visual comparison by just looking at
14 David Delva, the top column and then looking at the two -- I
15 should state two rows of the swabs of gloves?

16 A. That's correct. So when I first did a visual comparison
17 from David Delva to the gloves and if I note that there is a
18 positive association between David Delva and the mixture of DNA
19 found in the glove. That's when I'll do the statistical
20 calculation.

21 Q. And the statistical calculation is using computer program
22 which has been referred to as FST?

23 A. That's correct.

24 Q. And that program is used to prepare what's called the
25 likely ratio?

E9AAADEL5

Cooke - Cross

1 A. That program uses a likelihood ratio in its comparison,
2 that's correct.

3 Q. Now, does FST take into account blood relationship between
4 people?

5 A. If we had a sample that we compared and there was a
6 positive association I could use both as a comparison. But
7 when we do it it's just David Delva's profile then it does -- I
8 am sorry -- it does not take in account blood relation if I am
9 just comparing David Delva's blood profile. But if you did
10 have a blood relative and used that along with David Delva to
11 do a comparison and entered both their profiles, then it would
12 take that into account.

13 Q. But in this case the FST was used on David Delva alone; is
14 that correct?

15 A. That's correct.

16 Q. And it was not used on Dominique Jean-Philippe?

17 A. It was not because I noted --

18 Q. I am just asking whether or not it was.

19 A. OK.

20 Q. And there was no analysis done of the DNA of Gregory
21 Accilien; is that correct?

22 A. That's correct.

23 Q. So presumptively FST was not used to compare Mr. Accilien
24 to the glove?

25 A. That's correct. We did not have his DNA.

E9AAADEL5

Cooke - Cross

1 Q. Now, if, for example, a person related to David Delva came
2 in contact with the glove would that person possibly share some
3 DNA with Mr. Delva?

4 A. If they are blood relatives, then yes.

5 Q. And it would be more likely that they would share let's say
6 there's a mixture in the glove with Mr. Delva and a related
7 person, is there more likely to be more of the same DNA between
8 Mr. Delva and the related person or comparing to Mr. Delva and
9 the unrelated person?

10 A. I'm sorry. I don't understand your question.

11 Q. Let me rephrase the question. If a person related to
12 Mr. Delva had come in contact with the latex glove would that
13 relate person be more likely to share DNA with Mr. Delva than
14 an unrelated person?

15 A. Yes.

16 Q. Now, FST reports are for unrelated individuals; is that
17 correct?

18 A. Yes. So my report states that the scenarios between David
19 Delva and two unknown, unrelated persons compared to the other
20 scenario which is three unknown, unrelated persons.

21 Q. So it's all based upon the premise that David Delva and --
22 well, it's based on the premise that your conclusion that it's
23 David Delva's in the mixture with two unrelated persons; is
24 that correct?

25 A. That's correct.

E9AAADEL5

Cooke - Cross

1 Q. And if it turns out there it was a related person within
2 that mixture that could affect the likelihood ratio?

3 A. Yes, it would. The likelihood ratio would either go up or
4 go down.

5 Q. And how much DNA average with would an uncle and a nephew
6 share?

7 A. I don't know offhand. You share half of your DNA from your
8 mom and half from your dad. I am not sure offhand how much you
9 would share with your uncle or --

10 Q. If we do on average would it be like 25 percent?

11 A. I can't say offhand. I am sorry.

12 Q. Now, if you had done an analysis of a sample of
13 Mr. Accilien's DNA and you included it in your comparisons --
14 well, let me withdraw the question. If you did an analysis of
15 an uncle of Mr. Delva and you included in your comparison then
16 would you agree that the FST analysis in this case could be
17 different?

18 A. First that uncle would have to be positively associated
19 with the mixture in order for me to include them in the FST and
20 if they're positively associated then the FST number would
21 differ.

22 Q. So if you prepared a similar chart like this but instead of
23 having David Delva here, you have the uncle and -- but all this
24 information is the same regarding the swabs of the glove and
25 the comparison is similar, then you would not use FST; is that

E9AAADEL5

Cooke - Cross

1 correct?

2 A. I am sorry. Can you ask the question again.

3 Q. If you took a swab from David Delva's uncle and you did a
4 sample and you prepared a line similar to the way you have the
5 line for David Delva here on this chart -- and I realize the
6 numbers will not be exactly the same because each person's
7 unique but, certainly, it's possible that you could have a
8 similar match where you have comparisons similar to all these
9 blue circles and only about five circles at the top; is that
10 correct?

11 A. So if we did a comparison between David Delva's uncle and
12 we saw David Delva's uncle either a possible contributor or
13 cannot be excluded from the mixture, then we would use his DNA
14 profile in our FST calculation. I am not sure --

15 Q. Let me ask you this way. If you did a -- if you took a
16 sample from David Delva's uncle and did a comparison with the
17 mixture and glove, it's possible that you would not be able to
18 exclude him; is that correct?

19 A. That's correct.

20 Q. And that's what happened with David Delva. You felt it was
21 not possible to exclude him?

22 A. That's correct.

23 Q. And because you could not exclude David Delva, then you
24 went on to do the FST analysis?

25 A. That's correct.

E9AAADEL5

Cooke - Cross

1 Q. Now, if you had done the, taken a sample from the uncle and
2 done a comparison and you couldn't exclude him as well, then
3 you wouldn't have done the FST analysis; is that correct?

4 A. We would. We could do different scenarios with our FST
5 analysis. So if we could the same scenario we did before or we
6 could do another where we have David Delva and David Delva's
7 uncle and one unknown unrelated person compared to David
8 Delva's uncle and two unknown, unrelated persons.

9 Q. If you do those comparisons though the results regarding
10 David Delva may be different than what's in your report in
11 evidence?

12 A. That's correct.

13 Q. And since a sample was not been taken from Mr. Accilien and
14 since a comparison of Mr. Accilien's DNA has not been done on
15 the glove there's no way to speculate how your results may have
16 been different; is that correct?

17 A. That's correct.

18 Q. And, in fact, the results could have shown that it was even
19 more likely that the DNA belonged to Mr. Accilien as opposed to
20 Delva because they are related?

21 A. That would be a different statistic. When we compare -- if
22 I included Mr. Accilien's DNA profile and let's say that he
23 could not be excluded and we used him in the FST calculation
24 we're still only calculating the ratio between Mr. Delva,
25 Mr. Accilien and one unknown, unrelated individual versus

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Cooke - Cross

1 Mr. Accilien and two unknown, unrelated individuals. We're not
2 seeing the likelihood of Mr. Accilien being in the mixture.

3 Q. But it's certainly possible that Mr. Accilien had been
4 thrown into the mix, so to speak. Given the fact they're
5 related it's a possibility that there's a greater likelihood
6 that it was Mr. Accilien's DNA on the glove and not
7 Mr. Delva's?

8 A. That's not what the statistic is going to be calculating.

9 Q. Statistics cannot give you an opinion one way or another on
10 that?

11 A. That's correct.

12 Q. Now, you did not use -- I think I already asked you this
13 but if I did, I am sorry. You did not use the FST program to
14 compare Dominique Jean-Philippe's DNA to the mixture on the
15 glove; is that correct?

16 A. That's correct because I excluded him we did not do FST.

17 Q. That is when we were talking about right before the lunch
18 break that is when you did the visual comparison?

19 A. That's right. If I visually exclude someone then we do not
20 do FST on that sample.

21 Q. Did you -- when did you that comparison did you prepare a
22 chart similar to that one for Mr. Dominique Jean-Philippe and
23 the two amplified swabs in the glove?

24 A. When we exclude someone from any sample in the case we do
25 not do a table. That's part of our policy. So the only time

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Cooke - Cross

1 we do a table is when there's a positive association.

2 Q. So when you did the exclusion it was -- you did have at
3 least not necessarily the same exact numbers but similar
4 numbers, allele numbers for Mr. Jean-Philippe and your allele
5 numbers for the glove and you looked at some kind of charts or
6 data that you compared the two side-by-side; is that correct?

7 A. That's correct. I would compare the raw Dominique
8 Jean-Philippe's profile to the raw data from the glove.

9 Q. Now, if you had used FST to compare Dominique Jean-Philippe
10 with the swabs of glove and it turned out that it was not
11 Dominique Jean-Philippe's DNA in the mixture what would the
12 likelihood of ratio be in that instance?

13 A. The likelihood ratio would state, I will just throw a
14 number out there. So maybe let's say it's a thousand times
15 more likely that the DNA -- I am sorry. I would need to look
16 at how the statement is but that the DNA found mixture on the
17 swabs of the glove originated from three unknown unrelated
18 individuals versus Dominique Jean-Philippe and two unknown
19 unrelated individuals.

20 Q. So it would be in essence a negative likelihood ratio?

21 A. You never get a negative value. The way you do it is you
22 get a statistic and then if it is less than one then you do one
23 over that number and that's how you get the thousand.

24 Q. And then on the opposite if it turned out it was Dominique
25 Jean-Philippe's DNA in the mixture you would come up with a

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Cooke - Cross

1 likelihood ratio, not necessarily the same number but similar
2 to the way we have it on your report of Mr. Delva. Mr. Delva's
3 report is four million some odd to one or but it would be some
4 type of ratio number; is that correct?

5 A. So, if there's a positive association it would mean that
6 the scenario that that person is included it would be more
7 likely. So it would be whatever, a thousand times whatever it
8 is.

9 Q. So, right before the break I was asking you questions about
10 whether or not there's any subjectivity. Let me ask it to you
11 this way. You looked at the allele data for Mr. Delva swab's
12 on the glove. You did your comparisons and then -- so you in
13 your opinion in your, based upon your training and expertise
14 you determined that it should then go to the FST program?

15 A. That's correct.

16 Q. And then with Mr. Jean-Philippe you looked at the allele
17 data of his sample and compared it with the allele data on the
18 gloves and based upon your training and expertise and
19 experience it was your determination that he should be excluded
20 manually and not, there was no need to send it to the FST
21 program; is that correct?

22 A. That's correct.

23 Q. And would you agree that between experts at least as far as
24 those determinations as to whether or not a comparison should
25 be excluded or got FST that reasonable experts could differ on

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Cooke - Cross

1 whether or not it should go to FST?

2 A. That's correct. But that's why we have review processes in
3 our lab. So that before my report gets reported out someone
4 views my work and agrees with what I wrote up in the report.

5 Q. But you would agree that there is no one universal protocol
6 and that somebody else that has training and experience and is
7 from a different lab in a different part of the country may
8 reach a different conclusion as to whether something should or
9 should not go through the FST?

10 A. Yes, that's possible.

11 Q. You had indicated that on your direct-examination if there
12 are six or more alleles, two times or six or more alleles in
13 two or more locis then it's not used; is that correct?

14 A. If there is more than six -- I am sorry. If there's more
15 than six two or more times then we deem the sample inconclusive
16 that means that there are four or more contributors and we
17 don't use it to do any comparisons.

18 Q. So in this particular case I am pointing to the first
19 column with the first loci column where it ends in number 79?

20 A. OK.

21 Q. Do you see in the second amplification there are seven
22 numbers?

23 A. Yes.

24 Q. So does that mean that there is more than six alleles in
25 this loci?

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Cooke - Cross

1 A. That's correct.

2 Q. And so if let's say in the second column there's in the
3 same row the duplicate one, there's only three in this one but
4 if there had been seven in that one, then at that point the
5 sample could not be used; is that correct?

6 A. That's correct.

7 Q. And as we go through all of this you'll see in the same row
8 the second row, the duplicate row, the one ending in 33 there
9 are six alleles; is that correct?

10 A. That's correct.

11 Q. And now, the determination of the number of alleles in
12 these amplifications that is done during one of the steps in
13 the rotational system; is that correct?

14 A. Well, one of the steps during the rotation system we
15 analyze the raw data normally with mixtures. They leave
16 everything alone and they don't make any edits to that mixture
17 and we make edits if something is an artifact which is not true
18 DNA.

19 Q. But so let me ask you a question this way. These allele
20 numbers in these rows that say swabs of gloves the allele
21 numbers were not determined by you; is this correct?

22 A. They're determined by the software.

23 Q. OK. And, but the software gets it based upon analysis done
24 by the analysts in that step in the rotational process?

25 A. That's correct. But then I would review their work and if

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Cooke - Cross

1 I don't agree then I would go back and change what they had
2 done if they did any edits.

3 Q. And so but if -- I know you've told us that there's reviews
4 and there's checks in place but if one of those analysis did
5 make a mistake along the rotational process it's possible that
6 these numbers could be different?

7 A. I am not sure what you are asking. Like what mistake you
8 are talking about?

9 Q. For example, there's seven in the first column and there's
10 three in the second column pointing to the second row, is it
11 possible that if someone made a mistake there could be four in
12 the second column of the second row instead of three alleles
13 there?

14 A. Well, when they made the analysis nothing was edited out so
15 this is what it is. This is how the DNA for that sample
16 amplified on each occasion. So I don't understand what mistake
17 you are talking about.

18 Q. Well, if one made a mistake during the amplification
19 process then these allele numbers could be different?

20 THE COURT: You mean like a 16 could be a 15 or a 22
21 could be a 23?

22 MR. PITTELL: Right.

23 Q. A 16 could be a 15 or there could be an additional number
24 or one other number could be dropped out?

25 A. It wouldn't be a mistake. I mean the only mistake you

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Cooke - Cross

1 could is maybe a sample mix up. But in my opinion these
2 mixtures on the first amplification and mixture on the second
3 are confirmed because they're basically the same alleles. The
4 reason why they are not exactly the same is because it is a
5 small amount of DNA to start out with. There's three
6 contributors, so you are not going to see the exact same
7 alleles at every location here.

8 Q. Now, in the column ending 33 is the last two numbers in the
9 swabs of glove duplicate row where there's six digits, had
10 there been a seven, the number in that row then this whole
11 sample would have been inconclusive; is that correct?

12 A. If there was possibly a seventh one and it depends on the
13 sample. It's up to the interpretation of that analyst who is
14 writing the case and I could have deemed it inconclusive.

15 Q. So you would agree at least this one we were close to being
16 inconclusive because we had seven in one and six in another?

17 A. I mean you would have to look at the whole sample again.
18 The possible seventh allele that's called in the duplicate I
19 think is more likely coming from an artifact which is not a
20 true allele because you don't see any indication of more than
21 three contributors anywhere else on the other location. So in
22 my opinion the seven, the allele in the first one is possibly
23 an artifact compared to being a true allele.

24 Q. But you would at least agree the fact that there's seven
25 here and that there's six here that we're getting close to the

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Cooke - Cross

1 exclusion point; is that correct?

2 MR. POSCABLO: Objection, your Honor, to the term
3 "exclusion".

4 THE COURT: I understand. Why don't you rephrase?

5 Q. Had you indicated that if there are six or more two times
6 that the samples excluded and can't be used; is that correct?

7 A. More than six.

8 Q. Right. OK. And so the fact that we have, if we had seven
9 and two of them it's possible that the sample would have been
10 excluded based upon that?

11 MR. POSCABLO: Objection again, your Honor.

12 THE COURT: I think it's the wording of the way in
13 which the excluded is changing between the two questions.

14 You can answer if you can understand it.

15 A. If there was more than six alleles at two locations then I
16 would possibly deem the sample inconclusive and then I would
17 not make any comparison to the sample.

18 Q. So if there had been a seventh allele in this column where
19 the number ends in 33, it's possible that you might have then
20 at that point considered this inconclusive?

21 A. Yes.

22 Q. And you had indicated that the reason why it would be
23 inconclusive is at that point there would be a possibility that
24 there would be two more persons in the mixture?

25 A. That's correct.

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Cooke - Cross

1 Q. Because if there's three people in the mixture then the
2 number of alleles is going to be -- well, if I guess it can't
3 be a mixture if it's only one person but for one person there's
4 either one or two alleles; is that correct?

5 A. That's correct.

6 Q. So if it's three people, then the minimum is going to be
7 three and maximum is going to be six?

8 A. I wouldn't say that there's a minimum but the maximum would
9 be six.

10 Q. Okay. So the maximum would be six. So that's why the
11 number six or more is so critical because if there's more than
12 six then there's going to be more than three people in the
13 mixture?

14 A. Possibly, yes.

15 Q. Ms. Cooke, I am showing you a document from one of the
16 exhibits. It's Exhibit 1000. I believe it's page five. Can
17 you see that on your screen?

18 A. Yes.

19 Q. What is this or do you -- actually, do you recognize this
20 document?

21 A. Yes, I do.

22 Q. What is this document?

23 A. It's part of it's page five of my report of my, for the
24 evidence file and this particular is the evidence that we
25 received in the case. The item numbers, voucher numbers, the

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Cooke - Cross

1 date that we received it and then a description of what the
2 evidence was.

3 Q. And the latex glove that you compared with Mr. Delva's DNA
4 that's on that list; is that correct?

5 A. That's correct.

6 Q. And is it gonna be in about the middle where it says latex
7 glove from IO plastic bag it actually says it twice but it
8 would be the second time it says that?

9 A. I believe it's Item Three, so of the second time.

10 Q. Right, item three all the way on the left column?

11 A. That's correct.

12 Q. Now, starting at the top do you see where it says
13 "cigarette butt from computer desk"?

14 A. Yes.

15 Q. Was Mr. Delva's DNA found on that?

16 A. No, it was not.

17 Q. Do you see where it says "bottle from living room table"?

18 A. Yes.

19 Q. Was there Delva's DNA on that?

20 A. No. I believe the bottle was insufficient for DNA.

21 Q. Do you see where it says "cigarette butt from hallway on
22 floor"?

23 A. Yes.

24 Q. Was Mr. Delva's DNA on that?

25 A. No, it was not.

E9AAADEL5

Cooke - Cross

1 Q. In fact, if I go through every item on this list isn't it
2 true that Mr. Delva's DNA is not according to your lab, it's
3 not on any of these items except for Item Number Three
4 corresponding to the latex glove?

5 A. That's correct.

6 MR. PITTELL: If we could just show your report up on
7 the screen.

8 (Pause)

9 Q. All right. Ms. Cooke, I am showing you the first page of
10 Exhibit 1003. This is your report; is that correct?

11 A. That's correct.

12 MR. PITTELL: And if we could just zoom in on the
13 portion where it says the DNA mixture found on the swab is 4.4
14 two million times more probable.

15 (Pause)

16 Q. Now, in some of your other reports the numbers you had were
17 in the trillions like when you had a DNA profile of somebody
18 was in the trillions and you had indicated that when the number
19 is that high there can only be one person in the world that
20 match that; is that correct?

21 A. There are two different statistics. The statistics where
22 it's in the trillions and which we did on the evidence that's
23 called Random Match Probability and that's determining how that
24 DNA profile found on the evidence is in the world population.
25 This is the likelihood ratio, so it's two different statistics.

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Cooke - Cross

1 Q. So this is just a statistical ratio of the probability
2 about some of the DNA being in the mixture coming from David
3 Delva and to two unknown unrelated persons compared to the
4 possibility of the sample just having three unknown unrelated
5 persons?

6 A. So likelihood ratio puts a wait until into which of two
7 scenarios is more likely.

8 Q. So the two scenarios you are comparing is scenario of David
9 Delva and two unknown persons versus scenario of three -- let
10 me withdraw and rephrase that again. So the two scenarios that
11 you are comparing is David Delva and two unknown unrelated
12 persons versus three unrelated persons.

13 A. That's correct.

14 Q. But this whole scenario is premised on the assumption that
15 Mr. Accilien is not in the mix; is that correct?

16 A. That's correct.

17 Q. And when I say "Mr. Accilien" I mean a related person?

18 A. That's correct.

19 Q. And so if a related person is in the mix then the number's
20 going to be different; is that right?

21 A. If the possibility that a related person's in the mix then,
22 yes, the number would be different.

23 MR. PITTELL: Judge, I am now just going to check to
24 see if I have another question.

25 THE COURT: All right.

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Cooke - Cross

1 MR. PITTELL: That's it. Thank you very much,
2 Ms. Cooke.

3 THE COURT: Thank you.

4 Mr. Poscablo.

5 MR. POSCABLO: Yes, judge.

6 REDIRECT EXAMINATION

7 BY MR. POSCABLO:

8 Q. Hi, Ms. Cooke.

9 A. Hi.

10 Q. Ms. Cooke, do you remember on cross-examination you were
11 asked several questions about the four different swabs that
12 were taken of the glove; do you remember that?

13 A. Yes.

14 Q. And testified that you actually didn't take those swabs,
15 correct?

16 A. That's correct.

17 Q. You testified that one of your colleagues did, correct?

18 A. That's correct.

19 Q. If you had swabbed that glove how would you have done it?

20 A. I would have swabbed each side of the glove probably using
21 one side per side, back and front and then turned it inside out
22 and then swabbed with one swab back and forth with one swab
23 each and then combined it the same way. This is how we're
24 taught to examine the evidence for a touched item.

25 Q. Just exactly the same way your colleague did?

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Cooke - Redirect

1 MR. PITTELL: Objection.

2 THE COURT: Sustained. Rephrase.

3 Q. So you would have taken the same number of swabs that
4 actually would have taken?

5 A. Yes.

6 Q. In the manner that they were taken?

7 MR. PITTELL: Objection.

8 THE COURT: I think you need to word it differently.
9 Sustained.

10 MR. POSCABLO: I'll just move on, your Honor.

11 Q. Want to go over this chart real quick because the term, the
12 artifact and stutter and dropout got a little mixed up.

13 What is an artifact?

14 A. An artifact is an allele that might have been called in the
15 mixture that isn't a true allele coming from an individual who
16 contributed DNA in the case.

17 Q. In the world of DNA what a stutter?

18 A. A type of artifact. So a stutter can happen when DNA is
19 being copied. That enzyme copies the DNA sometimes slips off
20 the DNA and DNA instead of being a 12 would sometimes come up
21 as an 11. So this is seen in DNA and it's literature and so
22 it's a single source DNA profile and sometimes maybe at one
23 location we see it's an 11, 12, 15 but it's actually a 12. We
24 could take an edit the 11 out. In cases of mixture we don't
25 make any edits because we can't tell if the DNA is actually an

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Cooke - Redirect

1 artifact or true allele.

2 Q. What is a dropout?

3 A. Dropout happens when we start out with a low amount of DNA
4 in a sample and sometimes the larger fragments or locations
5 have larger fragments of DNA sometimes are too small to be
6 detected by our software so it's not called by software.

7 MR. POSCABLO: With the Court's permission may I ask
8 Ms. Cooke to just step down quickly?

9 THE COURT: Yes.

10 Q. Ms. Cooke, on Government Exhibit 1003-A and then 1003-R you
11 used a black marker to circle certain loci to either a stutter,
12 a dropout or --

13 A. I only circled the ones that there's a possible dropout.

14 Q. OK. So in these situations where there is a dropout you
15 mean there's an allele that possibly dropped out?

16 A. That's correct. So when DFS the 17 probably dropped out
17 from the second amplification but we do see it in the first.

18 Q. What about the second one?

19 A. In this one the 22 possibly dropped out in the first
20 amplification but we see it in the second.

21 Q. And what about in the one that's TPOX?

22 A. In this one the 10 possibly dropped out in the second
23 amplification but we do see it in the first.

24 Q. 14 dropped out in S51, correct?

25 A. Yes.

E9AAADEL5

Cooke - Redirect

1 Q. 24 dropped out in FGA?

2 A. So that 1824 possibly dropped out in the first
3 amplification and 24 in the second. But again, in cases of
4 dropout it's, we could still sometimes see a peak in that
5 location but it's just not high enough to be called by
6 software. But when you visually look at it you could tell that
7 it's possibly the 24 or in this case possibly the 14.

8 Q. You could go back to the stand. But could you explain what
9 you mean by peak what you are talking about?

10 A. OK. So in our raw data comes out and it looks like a graph
11 so it has an X and Y axes. And at each location the alleles
12 that you see looks like peaks, like mountains or upside-down
13 Vs. So the higher the peak the more DNA for that allele that's
14 seen in the sample. So that's how if it's a mixture sometimes
15 we are able to determine who contributed the most DNA to a
16 mixture because their peaks would be higher. In this case
17 we're able to determine who contributed the most DNA to the
18 mixture. But in the cases of dropouts sometimes the peaks
19 could be very small and they are not called by our software but
20 you do still see them visible.

21 Q. You used a term "positive association". What does that
22 mean?

23 A. Positive association would be possibly a contributor to the
24 case. So therefore we see every single one of his alleles in
25 the mixture of DNA. So that would be possibly a contributor.

E9AAADEL5

Cooke - Redirect

1 We could also positively associate someone that cannot be
2 excluded. And this is the case of Mr. Delva where we see most
3 of his DNA alleles in the mixture except for a few alleles
4 which can be reasonably explained and by "reasonably explained"
5 I mean allelic dropout.

6 Q. So let's just be clear about something. You are saying
7 that he cannot be excluded from the DNA sample taken from the
8 glove?

9 A. That's correct.

10 Q. If you were to learn that his uncle also touched that glove
11 could you exclude him, Mr. Delva?

12 A. Can I exclude Mr. Delva? I would still make the same
13 exclusion that he cannot be excluded from the glove and still
14 do the FST on it.

15 Q. In fact, the only time you couldn't do with a new piece of
16 information is if I told you the Mr. Delva had a twin?

17 A. If he had an identical twin then I could say that it could
18 be possibly that identical twin or Mr. Delva.

19 Q. But absent that even a family member that touched that
20 glove there would still be a positive identification for
21 Mr. Delva on this glove?

22 A. That's correct.

23 Q. Just explain to the jury a little more because I think it
24 got a little complicated. The FST and the ratio all that stuff
25 you testified about that just talks about the number at the end

E9AAADEL5

Cooke - Redirect

1 of the day, right, the number that you can say 1.42 million,
2 five million, 18 trillion a gazillion, that calculates the
3 number, right, of the association?

4 A. It calculates a weight to which scenario is more likely.

5 MR. POSCABLO: Ms. Chen, can you put up Government
6 Exhibit, I believe, it's 1002.

7 (Pause)

8 Q. So this Dominique Jean-Philippe's report, right?

9 A. Yes.

10 Q. In your expertise with two brothers who had the same mom
11 and dad, share similar alleles?

12 A. Yes, they would.

13 Q. OK. Now, take the brother and the brother and these number
14 of alleles that they may potentially share and now you take a
15 nephew and an uncle, who would share more alleles?

16 A. A blood brother, a full blood brother compared to an uncle
17 would share more alleles.

18 Q. So, if I were to tell you that Mr. Accilien and Dominique
19 Jean-Philippe were brothers, blood brothers, same mom, same dad
20 and then I told that you Mr. Accilien and Mr. Delva had a
21 nephew and uncle relationship, who would share more alleles,
22 Mr. Accilien and Mr. Delva or Mr. Accilien and his brother
23 Dominique Jean?

24 A. Most likely Mr. Accilien and Dominique Jean Philippe.

25 Q. How many times did you find Dominique Jean-Philippe's DNA

E9AAADEL5

Cooke - Redirect

1 in any of the evidence that you reviewed?

2 A. Dominique Jean-Philippe was excluded from all items of
3 evidence in this case.

4 Q. OK. One more thing I am going to ask you cause you were
5 asked about it several times and I'm going to ask you to turn
6 to your note if you don't already know the answer. In two
7 sections here --

8 MR. POSCABLO: And Ms. Chen, can you put up 1003-A.

9 (Pause)

10 Q. Two areas here of this chart, and specifically, I am
11 speaking about the first locus D8S1179 and the swabs of the
12 glove duplicate, there are seven numbers?

13 A. That's correct.

14 Q. And in D19S433 there are five alleles, OK. In both the --
15 if you compare -- if you both do the glove and the glove
16 duplicate --

17 A. There are five, yes.

18 Q. But if you just do the duplicate it's four?

19 A. OK. So if you are just looking at the duplicate it's four.

20 (Continued on next page)

E9a1del6

Cooke - redirect

1 BY MR. POSCABLO:

2 Q. Right. Can you tell from looking at your raw data whether
3 there are any other potential alleles that you decided
4 shouldn't be included in this chart?

5 A. So looking at the raw data, again, there could be possible
6 allele dropout, where you would see a peak but it wasn't called
7 by our software, but we take everything into consideration, so
8 if there were many locations where I see between both the
9 called alleles and the peaks that were not called, we might
10 take those into consideration also, but the only -- the only
11 location that showed any more than six peaks at a location was
12 that duplicate of the D8S1179.

13 Q. The first one, locus?

14 A. Yes.

15 Q. And just to be clear again, if you were to find that there
16 were two or more loci where there was greater than six alleles,
17 as per the protocols and standards of the New York City OCME,
18 you would deem it inconclusive, is that correct?

19 A. That's correct.

20 Q. Separate and apart from whether you could find that
21 Mr. Delva is positively associated with the glove, you would
22 technically deem it inconclusive.

23 A. We would deem it inconclusive before we compared it to any
24 suspect or reference sample in the case.

25 Q. But that's not what happened here, right?

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Cooke - redirect

1 A. I did not deem it inconclusive.

2 THE COURT: Let me ask, though, if you deem it
3 inconclusive, you stop doing your analysis.

4 THE WITNESS: For that sample, yes.

5 THE COURT: Okay. So let's say you've already
6 completed your analysis and you've got what you've got. All
7 right?

8 THE WITNESS: Okay.

9 THE COURT: And then you go back and you say, ah, I
10 could have called this other allele and now I've got the two
11 that are 7, or whatever. Assume for the moment that you've got
12 two loci, locations that have got 7, all right?

13 THE WITNESS: Yes.

14 THE COURT: Does that change your determination as to
15 Mr. Delva?

16 THE WITNESS: Okay. So we probably wouldn't somehow
17 get a 7 one later that we --

18 THE COURT: Assume you do.

19 THE WITNESS: So assume maybe I made a mistake and
20 maybe miscounted and there's two locations with 7.

21 THE COURT: Or there's an FST thing with the peaks and
22 valleys and suddenly you're going to call an extra one, say,
23 oops, my eyesight was off that day, I now call an extra one.

24 THE WITNESS: So then I would -- if I later determined
25 that maybe I would deem the sample inconclusive because I think

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Cooke - redirect

1 there might be four or more people in there, then I could go
2 back, amend my report, and state that the sample is
3 inconclusive and I would not do that FST on David Delva, I
4 wouldn't do any comparisons to that sample.

5 THE COURT: But assume for the moment you've already
6 done your FST and assume for the moment you've already got -- I
7 mean, my point is, does it change the fact that David Delva's
8 DNA was found on the glove?

9 THE WITNESS: No. We still made that positive
10 association.

11 THE COURT: So you've made the positive association no
12 matter what.

13 THE WITNESS: No matter what. But if I felt that the
14 sample was in fact four or more people or let's say my
15 supervisor reviewing it did, then we would just deem it
16 inconclusive and we would do -- take out any associations with
17 it.

18 THE COURT: All right.

19 THE WITNESS: If later, like -- later, let's say, my
20 supervisor was reviewing the case and said, looking at that, I
21 would think that this is not a three-person mixture, at least a
22 three-person mixture, I think it's four or more people, I would
23 not do this FST on it. Then I would -- we would go back and
24 amend the report. If I agreed with her. We would have a
25 discussion about it. If, let's say, I ended up agreeing with

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Cooke - redirect

1 her, we would probably go back, amend the report, stating that
2 that sample is indeed inconclusive and we would take out the
3 FST and not do it.

4 THE COURT: All right. Mr. Poscablo.

5 BY MR. POSCABLO:

6 Q. And all that would do is you would take out the FST, you
7 wouldn't even calculate a ratio, right?

8 A. We wouldn't -- we wouldn't do any comparison --

9 Q. That's right.

10 A. -- if we found it inconclusive at a later date.

11 Q. But the proverbial cat's out of the bag because you already
12 did, so would that change your expert opinion that Mr. Delva's
13 positively associated with this glove?

14 A. No, it wouldn't, and I still stand by that. I believe that
15 it's at least three people and not four or more.

16 Q. Okay. Now I just want to end on one topic, because you
17 were asked several cross-examination questions about it, okay,
18 and that's secondary transfer of DNA, okay?

19 A. Okay.

20 Q. So let me give you a hypothetical. Let's say Mr. Pittell
21 is a heavy shedder and I shook his hand and I touched my bottle
22 of water and I handed you the bottle of water so the lab could
23 do a DNA test. Is it possible that Mr. Pittell's DNA would be
24 on that bottle of water when you tested the outside of the
25 bottle?

E9a1del6

Cooke - redirect

1 A. Yes, it's possible.

2 Q. Is it likely?

3 MR. PITTELL: Objection.

4 THE COURT: Overruled.

5 A. I mean, I wouldn't be able to tell till I tested it, but it
6 depends on many factors. If he was a heavy shedder and you
7 shook his hand for let's say a good minute, two minutes --

8 Q. Let's say I rubbed his face. I just kept rubbing the man,
9 because he's a handsome man. And he's a heavy shedder. And I
10 touched my bottle, I wiggled it around, and I handed it to you.

11 A. Immediately touched the bottle and gave it a good hold?

12 Q. Gave it a great hold.

13 A. Then there's a possibility, yeah, that your DNA -- his DNA
14 would be on it.

15 Q. Certainly a possibility. My question was, is it likely?

16 A. That I wouldn't know. I mean, I would say it was a greater
17 likelihood than if, you know, you touched many other things and
18 then touched the bottle.

19 Q. So let's go there. Let's say I did the same thing, I just
20 played with his cheeks because he's so handsome, and then I
21 opened that door with the same hand, I pressed the elevator, I
22 went downstairs, I went and bought Cracker Jacks from the
23 downstairs lobby area, came back upstairs, I saw another lawyer
24 that I knew, I shook his hand, came back upstairs, touched the
25 bottle, gave it to you. Is it possible that his DNA would be

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Cooke - redirect

1 on that bottle?

2 THE COURT: Would still be on the bottle.

3 Q. Would still be on the bottle.

4 A. Would still -- that's when you touched the bottle, after
5 you came back upstairs?

6 Q. Is it possible?

7 A. It's possible.

8 Q. Of course it's possible. Is it likely?

9 A. In that case it's more unlikely than the first scenario.

10 Q. Okay. Now let me give you one final scenario. Let's say
11 we shared a room, and he's a heavy shedder. He's shedding all
12 over the room. And then I walk out and I go to Rite Aid and I
13 buy some gloves, and then I take those gloves and I walk for
14 another four or five minutes and I go into an apartment
15 building, I ring a bell, I go into an apartment building. I
16 then drop off the gloves. I sit around, I eat, I watch some
17 TV, using a remote control. I shake the hands of a couple of
18 buddies who are in that apartment. Maybe I have some sticky
19 chicken wings, hot wings, with sticky sauce on them. And then
20 I touch that glove. It's possible, right, that Mr. Pittell's
21 DNA would be on that glove?

22 A. Is guess it's possible.

23 Q. Is it likely?

24 A. I would say no.

25 MR. POSCABLO: Okay. No further questions, your

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1 Honor.

2 THE COURT: All right. Thank you.

3 Mr. Pittell, are we all set?

4 MR. PITTELL: Yes, we are, Judge.

5 THE COURT: All right. Thank you. You may step down,
6 Ms. Cooke.

7 THE WITNESS: Thank you.

8 (Witness excused)

9 THE COURT: All right. You know, we're close to
10 having our break. Let's go ahead and have our break. Do you
11 think our coffee is going to be there?

12 THE DEPUTY CLERK: I think it is.

13 THE COURT: All right. Ladies and gentlemen, we'll
14 take our midafternoon break, and I'll see you in a few minutes.
15 Thank you.

16 THE DEPUTY CLERK: All rise as the jury leaves.

17 (Jury excused)

18 (Recess)

19 (In open court; jury present)

20 THE COURT: Mr. Poscablo.

21 MR. POSCABLO: Your Honor, the government calls
22 Special Agent Eric Perry.

23 (Witness sworn)

24 MR. POSCABLO: Your Honor, with the court's
25 permission, prior to examining Special Agent Perry, the parties

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Perry - direct

1 have a stipulation, two stipulations they'd like to read, one
2 in full and one in part.

3 THE COURT: Yes. You may proceed.

4 MR. POSCABLO: Thank you, Judge.

5 It is hereby stipulated between the parties, with the
6 same header as before, that, if called to testify, a custodian
7 of records of Sprint would testify as follows:

8 He or she is familiar with the recordkeeping practices
9 of Sprint.

10 Government Exhibit 705 includes true and correct
11 telephone records, including toll records and cellular site
12 tower location information for the cellular telephone assigned
13 telephone number 347-734-2142.

14 Government Exhibit 705 includes dates and times
15 corresponding to each toll reflected in those records. Those
16 dates and times are recorded in Eastern Standard Time.

17 Paragraph C reads: Government Exhibit 701 includes
18 true and correct telephone records, including toll records, for
19 the cellular telephone assigned telephone number 917-574-2074.

20 Government Exhibit 701 includes dates and times
21 corresponding to each toll reflected in those records, and
22 those dates and times are recorded in Eastern Standard Time.

23 Paragraph 2. If called to testify, a custodian of
24 records of AT&T and Cingular Wireless would testify as follows:

25 He or she is familiar with the recordkeeping practices

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Perry - direct

1 of AT&T and Cingular Wireless.

2 Government Exhibit 702 includes true and correct
3 telephone records, including toll records, for the cellular
4 telephone assigned telephone number 201-916-0824.

5 Government Exhibit 702 includes dates and times
6 corresponding to each toll reflected in those records. Those
7 dates and times are recorded in Eastern Standard Time.

8 Paragraph 3. If called to testify, a custodian of
9 records of T-Mobile would testify as follows:

10 He or she is familiar with the recordkeeping practices
11 of T-Mobile.

12 Government Exhibit 704 includes true and correct
13 telephone records for the toll records, cellular site tower
14 location information for the cellular telephone assigned
15 telephone number 917-714-3787.

16 Government Exhibit 704 includes dates and times
17 corresponding to each toll reflected in those records. Those
18 dates and times are recorded in Eastern Standard Time.

19 The records contained in Government Exhibit 704
20 pertain to the cellular telephone marked as Government
21 Exhibit 600.

22 And finally, if called to testify, a custodian of
23 records of Cablevision would testify as follows:

24 He or she is familiar with the recordkeeping practices
25 of Cablevision.

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Perry - direct

1 Government Exhibit 707 includes true and correct
2 telephone records, including toll records, for the land line
3 telephone assigned telephone number 347-346-8013.

4 Government Exhibit 707 includes dates and times
5 corresponding to each toll reflected in those records, and
6 those dates and times are recorded in Eastern Standard Time.

7 Government Exhibit 707 is true and correct subscriber
8 information for the land line telephone assigned telephone
9 number 347-346-8013.

10 It is further stipulated and agreed that this
11 stipulation and Government Exhibits 701, 702, 704, 705, 707,
12 and 707-B may be received in evidence as government exhibits at
13 trial. Signed by all the parties.

14 Your Honor, the government offers the stipulation,
15 which is marked Government Exhibit 3004, as well as all of the
16 foregoing exhibits.

17 THE COURT: All right. Mr. Pittell, that is the
18 stipulation?

19 MR. PITTELL: Yes.

20 THE COURT: All right. Then those are all received.

21 (Government's Exhibits 701, 702, 704, 705, 707, and
22 707-B, and 3004 received in evidence)

23 MR. POSCABLO: And the next stipulation, I'm only
24 going to read a portion of this one.

25 It is hereby stipulated and agreed by all of the

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Perry - direct

1 parties that:

2 Paragraph 6. In or about August 2012 through October
3 2012, and specifically during the period September 2 through
4 September 5, 2012, the telephone number 347-734-2142 was
5 assigned to a cellular phone used by Trevor Cole.

6 Your Honor, we can offer the exhibit, the stipulation
7 now, and then we'll reoffer it again when we read the entire
8 stipulation to the parties, but we can offer it now.

9 THE COURT: What's the number of that stipulation?

10 MR. POSCABLO: 3005.

11 THE COURT: All right. Mr. Pittell?

12 MR. PITTELL: Yes, no objection. We're agreed upon
13 it.

14 THE COURT: Okay. 3005 is received.

15 (Government's Exhibit 3005 received in evidence)

16 MR. POSCABLO: Thank you, your Honor. Your Honor, may
17 I proceed?

18 THE COURT: You may.

19 ERIC PERRY,

20 called as a witness by the Government,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. POSCABLO:

24 Q. Good afternoon, Special Agent Perry. How are you?

25 A. Good. Thanks.

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Perry - direct

1 Q. What do you do for a living, sir?

2 A. I'm a special agent with the Federal Bureau of
3 Investigations.

4 Q. What type of work do you do for the FBI?

5 A. I'm a full-time member assigned to the FBI's Cellular
6 Analysis Survey Team. We use the acronym of CAST, C-A-S-T.

7 Q. And where are you located? Where is your field office?

8 A. My position is based out of our FBI headquarters office in
9 Washington, DC, but I am detailed to the New York field office
10 across the street.

11 Q. Do you cover a particular location or area in the United
12 States?

13 A. My work predominantly deals with the northeast region.
14 However, I do have cases on the West Coast, pretty much in the
15 LA area, in Colorado, several other states in the midwest.

16 Q. How long have you worked for the FBI?

17 A. A little over five years.

18 Q. Can you briefly tell the jury about your educational
19 background.

20 A. I have a bachelor's degree in recreation law enforcement
21 from the University of Maine up in Presque Isle.

22 Q. Can you explain what historical cell site analysis is.

23 A. Yes, I can. Any time that a phone connects to the network,
24 whether it be for a voice call or text message or to connect to
25 the internet or data connection, those records are collected

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Perry - direct

1 and maintained by the cellphone provider, such as AT&T,
2 T-Mobile, Verizon, and Sprint.

3 Q. What kind of training have you had regarding historical
4 cell site analysis?

5 A. To date I have over 400 hours of specialized training.

6 Q. Is that through the FBI?

7 A. It's actually -- majority of the training is actually
8 provided to us by a contractor by the name of Emerging
9 Technology Solutions, which is out of Morrisville, North
10 Carolina, and it's in conjunction with several hours of
11 training from the providers themselves, from their members of
12 their law enforcement subpoena compliance group as well as
13 their RF engineers.

14 Q. Now in addition to you actually attending and participating
15 in 400 hours of training, do you yourself conduct training?

16 A. Yes, I do.

17 Q. Can you tell the jury a little bit about that.

18 A. Actually just last week I was in the Boston, Massachusetts
19 area conducting two two-day classes into introduction --
20 introduction to basic cellular analysis to the Boston Police
21 Department, the Maine State Police, Massachusetts State Police,
22 as well as some other prosecutors from the attorney general's
23 office in Maine. We also -- in the last couple months I've
24 taught classes in New Mexico as well as Salt Lake City.

25 Q. Special Agent Perry, throughout your career with the FBI,

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Perry - direct

1 if you can approximate for me the number of call detail records
2 that you have analyzed.

3 A. That would be close to a thousand, sir.

4 Q. Okay. And approximately how many cell site reports have
5 you prepared as a member of CAST?

6 A. It would be close to 500.

7 Q. And how many times have you testified as an expert in the
8 area of historical cell site analysis?

9 A. I've testified -- this will be my 17th time. I would say
10 I was deemed qualified an expert in seven of those.

11 Q. What you mean by that is not that you were not deemed an
12 expert in the others.

13 A. My testimony was, you know, rose to the level of an expert
14 and therefore I was qualified as that, as an expert.

15 MR. POSCABLO: Your Honor, at this point the
16 government offers Special Agent Perry as an expert in
17 historical cell site analysis.

18 THE COURT: Mr. Pittell?

19 MR. PITTELL: I have no objection, Judge.

20 THE COURT: The court does find that Special Agent
21 Perry is an expert in historical cell site analysis and will be
22 allowed to testify in that capacity.

23 Ladies and gentlemen, you recall my instruction on
24 expert testimony. They can give opinions as well as fact
25 testimony.

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Perry - direct

1 You may proceed.

2 MR. POSCABLO: Thank you, Judge.

3 BY MR. POSCABLO:

4 Q. Special Agent Perry, can you explain to the jury generally
5 how a cellphone works.

6 A. A cellphone, in essence, is a two-way radio. It
7 communicates with cell towers through radio frequencies.

8 Q. And what is a cell tower?

9 A. A cell tower can come in different sizes and shapes. In
10 essence, it's a structure. A typical cell tower would be a
11 metal pole, such as like a flagpole or a metal tower that you
12 may see if you're driving along the New Jersey Turnpike.

13 Affixed to the cell tower is -- are the antennas, and that's
14 actually what -- the antennas are where your phones will
15 transmit and receive signals to and from.

16 Q. If you're standing by a particular tower and you make a
17 call, what happens to your call?

18 A. Actually, your phone is constantly stacking and racking is
19 the term that we use. It is constantly looking for the
20 strongest and clearest signal to provide you, as the customer,
21 the best quality of service.

22 Q. In the middle of a call?

23 A. Actually, that's a constant process. It's constantly -- if
24 it appears that your call quality is -- this is really
25 indicative if you're moving. As you move away from one tower

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Perry - direct

1 towards another, the signal will be weaker and then it will go
2 stronger towards the tower that you're driving towards.

3 Q. What happens? Does it kick you to the next tower?

4 A. What we call it is a handoff. They'll hand you off to the
5 next strongest, clearest signal, tower.

6 Q. And using that information, can you determine the location
7 of a cellphone at a certain point in time by cell tower sites?

8 A. We can determine the general vicinity, yes.

9 Q. Okay. And can you explain to the jury very quickly how a
10 tower hands over a call to another tower.

11 A. Again, once a phone is connected to a cell tower, to the
12 network, there's a constant evaluation between the phone and
13 the towers. It's constantly evaluating your receive signal
14 strength or the clarity of your call, and when it deems to
15 be -- as you move closer to another tower, there's a tower that
16 becomes more attractive or a stronger, clearer signal, it will
17 then switch your phone; the call will then just hand off to the
18 next closest tower.

19 MR. POSCABLO: Your Honor, may I approach?

20 THE COURT: Yes.

21 Q. Special Agent Perry, I'm handing you what's been marked for
22 identification as Government Exhibits 704 and 705. Do you
23 recognize these?

24 A. Yes, I do.

25 Q. So let's talk about 704. How do you recognize 704?

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Perry - direct

1 A. This is actually a CD-ROM or a DVD with my initials on it.
2 These are the call detail records for the phone number ending
3 in 3787.

4 Q. If you open the records contained in that disc, you said
5 that there are phone records, right?

6 A. Yes.

7 Q. If we printed them out, how many pages would we have?

8 A. It would be quite voluminous. It would be quite a stack of
9 paper.

10 Q. And what is the telephone number associated with the call
11 detail records contained on Government Exhibit 704?

12 A. The complete phone number is area code 917-714-3787.

13 Q. Do you associate that with a particular person?

14 A. Yes, I do.

15 Q. Who is that?

16 A. It's Dominique Jean-Philippe.

17 MR. POSCABLO: Your Honor, the government offers
18 Government Exhibit 704.

19 THE DEPUTY CLERK: It's in.

20 MR. POSCABLO: Oh, sorry, Judge.

21 THE COURT: That's all right.

22 Q. Government Exhibit 705, do you recognize that?

23 A. Yes, I do. It has my initials as well.

24 Q. Okay. What's the telephone number associated with 705?

25 A. That's going to be 3 -- I'm sorry -- area code

E9aldel6

Perry - direct

1 347-734-2142.

2 Q. And do you associate that with a particular individual?

3 A. Yes, I do.

4 Q. And who is that?

5 A. Trevor Cole.

6 Q. Okay. Did you analyze these records prior to your
7 testimony today?

8 A. Yes, I did.

9 Q. And what, if anything, did you do?

10 A. I actually compared the phone numbers actually to a
11 particular -- two different addresses which I was provided to
12 determine the amount of call activity that occurred in
13 perspective -- in relation to these two addresses.

14 Q. And after conducting that analysis, did you prepare
15 anything?

16 A. Yes, I did.

17 Q. Okay. I've placed before you what's been marked for
18 identification as Government Exhibit 706. Take a quick look at
19 that. And look up at me when you're done.

20 A. (Witness complies.) Okay. I'm familiar with these.

21 Q. What is it?

22 A. These are the exhibits that I created to reflect the
23 results of my analysis for these two phone numbers.

24 MR. POSCABLO: Okay. Your Honor, the government
25 offers Government Exhibit 706.

E9a1del6

Perry - direct

1 THE COURT: I think that's also in.

2 THE DEPUTY CLERK: No.

3 THE COURT: No, 706 is not in.

4 MR. POSCABLO: I don't think so, your Honor.

5 THE COURT: Mr. Pittell, do you have an objection?

6 MR. PITTELL: I have no objection, Judge.

7 THE COURT: All right. 706 is received.

8 (Government's Exhibit 706 received in evidence)

9 BY MR. POSCABLO:

10 Q. Okay. Special Agent Perry, I'd like to go over a couple of
11 the slides from your report, okay?

12 MR. POSCABLO: And with the court's permission, and
13 Ms. Chen's help, can we put on slide number 4.

14 Actually, let's start with slide number 2.

15 Q. What is that a photograph of?

16 A. This is actually two photographs of the same cell tower.

17 Q. And that's the cell tower you were testifying about
18 earlier.

19 A. It is, and this is actually an image of a cell tower that I
20 pulled from the internet.

21 MR. POSCABLO: Page 3, Ms. Chen?

22 Q. What is that? What are these photographs of?

23 A. Not all cell towers look like the previous one. Cell
24 towers, especially here in Manhattan, will often be affixed to
25 structures, such as buildings and water towers, as well as

E9aldel6

Perry - direct

1 bridges. This is just a collage of photographs in which --
2 particular locations that cellphone towers could be concealed.

3 Q. The rock on the bottom left-hand portion, there's a cell
4 tower in there?

5 A. That's actually -- especially if they need to fill in a
6 dead area of a park, a lot of times they'll just put a small
7 antenna in.

8 MR. POSCABLO: Slide 4, Ms. Chen, please.

9 Q. What does this document show?

10 A. This is actually an excerpt or a portion of the actual call
11 detail record for the phone number ending in 3787 that I
12 analyzed, and this is described -- this is explaining column
13 definition for the particular call detail record.

14 Q. This is a snapshot of the record that you actually
15 reviewed?

16 A. It's a portion, yes.

17 MR. POSCABLO: Ms. Chen, could we just quickly go
18 through that. And highlight just one portion of it and then we
19 can scroll to the right, if that's possible. Perfect. Thank
20 you.

21 Q. The first column includes what? Just lead me through the
22 columns.

23 A. MISSDN is actually the customer target number in which
24 these records were pulled for.

25 The IMSI, which is the international mobile subscriber

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Perry - direct

1 identifier, that's just the SIM card. That's the SIM card
2 that's placed inside of an actual -- your phone. And that is
3 actually what these records are generated off from is the SIM
4 card.

5 The next column is IMEI. That's called the
6 international mobile equipment identifier. And that's actually
7 the serial number for the plastic part of your phone, the shell
8 of your phone.

9 The Event Type, most -- in this particular case, these
10 actually are -- it's going to either be voice, SMS, which is a
11 text message, or a data connection.

12 The Start Date and Time is the date and time that the
13 event occurred.

14 Q. The Direction?

15 A. Yeah, I'm sorry, yes. The Direction, of course, that's
16 either outbound or inbound, depending on what number is calling
17 who.

18 Q. Meaning outgoing is the person who has the phone is making
19 the call?

20 A. Yeah. In this case, if 3787 was making an outbound call,
21 it would say outgoing.

22 Then Connected To is which number that the phone
23 number 3787 is connected to. The First LAC is -- LAC stands
24 for location area code. If you think of this particular term
25 and this particular number as a zip code or an area code for

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1 land line, such as 212, we know that to be the Manhattan area
2 code, or a zip code, it resides in one specific geographical
3 place on -- in the United States. This, in terms of cellular
4 technology, a LAC is a group of cell towers that contain a
5 hundred different towers, and if you think of it almost like a
6 forest full of trees -- and this, again, is going to reside --
7 this particular, you know, LAC will reside in a specific
8 geographical area.

9 The next column is called First Cell ID. This is a
10 combination of two different numbers. With T-Mobile, the first
11 four numbers are going to represent the actual tower, so if I
12 take the top row here, there's a number of 2057. That is
13 actually going to be your tower number. The last number is
14 going to determine which sector or on what particular antenna
15 did that call occur on. And T-Mobile is gracious enough to
16 provide the latitude and longitude of the cell tower that was
17 used at the beginning of the call and at the end of the call.
18 So as you see here, you have First LAC, First Cell ID, and you
19 have the First Tower Latitude and Longitude. That's the GPS
20 coordinate in which that tower can be located and then you'll
21 see the additional columns saying LAC, Last LAC, Last Cell ID,
22 and then Last Tower Latitude and Last Tower Longitude. That's
23 the particular cell tower that the call ended on.

24 Q. Just a quick question about this. You noted earlier that
25 the event type was voice. Does that differentiate between a

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Perry - direct

1 voice mail or a conversation?

2 A. You often want to look at this in conjunction with the
3 duration and a lot of cellphone providers will actually have
4 specific phone numbers that are their voice mail platforms. I
5 believe T-Mobile starts with 805. And/or you want to look at
6 your duration as well sometimes.

7 Q. If there is a conversation, will a cell site record,
8 meaning a longitude and latitude, be captured?

9 A. Yes, it will.

10 Q. What about with text message?

11 A. T-Mobile, they do not capture that under their norm -- you
12 know, the normal records. They're in the process of updating
13 their system where they will capture that for future use.

14 Q. What about voice mail?

15 A. Voice mail, if it actually -- the last LAC times, there
16 will be no information of the towers. It will say NA for not
17 applicable.

18 Q. You said gracious earlier with regards to latitude and
19 longitude, because what do other cellphone companies do?

20 A. I think there's close to 500,000 cellphone towers with all
21 the providers combined, and for a company such as Sprint and
22 Verizon, where they don't automatically incorporate the
23 latitude/longitude in the same record, you have to go to a
24 special key, a tower with -- and you have to go find the
25 individual tower that was used. It can be a quite painstaking

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1 process.

2 MR. POSCABLO: Let's go to slide 5.

3 Q. And what does this show?

4 A. This is actually a portion of the call detail records for
5 the Sprint phone number ending in 2142, which was Trevor Cole's
6 phone number, and again, this is a slide to provide the
7 definition of each call.

8 Q. And it has very similar information as the T-Mobile slide
9 does, right?

10 A. Yes, it does, minus that latitude and longitude.

11 Q. Right. Which column do you apply that code to?

12 A. In this particular case I would need the cell tower key.
13 And with Sprint or Verizon they term the term Repoll that
14 describe that LAC, the group of cell towers, so this is Repoll
15 262, and then you have the First Cell and Last Cell. Again,
16 that's the first tower and sector that the call started on and
17 the last tower and sector that the call ended on. So taking
18 that first row, it was utilizing a group of towers in Repoll
19 262 -- I'm sorry. Utilized, you know, towers located in Repoll
20 262 but specifically utilized -- and this is why Sprint
21 actually flip flopped it, and it's a little bit different than
22 T-Mobile and AT&T is where they put the sector number before
23 the tower number. So in this case, the number, the complete
24 number is 30014, but that in essence means that's sector 3 on
25 tower 14.

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Perry - direct

1 MR. POSCABLO: Let's go to slide 6, Ms. Chen.

2 Q. What does this slide show?

3 A. This is actually the surrounding cell towers for
4 T-Mobile -- or T-Mobile cell towers surrounding the address of
5 830 Magenta Street in the Bronx, New York.

6 Q. And how were the cell towers depicted?

7 A. With a biohazard sign. It kind of shows up the three
8 sectors.

9 Q. In the middle of that is an address, 830 Magenta Street, is
10 that right?

11 A. Yes, sir.

12 Q. And why is there other writing in sort of like a text box?
13 What do those represent?

14 A. Those represent the LAC and the cell ID for those
15 particular towers.

16 Q. And are those the towers that service that address?

17 A. Yes.

18 MR. POSCABLO: Okay. Ms. Chen --

19 THE COURT: So any one of the towers can service that
20 address?

21 THE WITNESS: As you can see, the address of 830
22 Magenta Street, your Honor, is in the middle of all three
23 towers, so it's going to be specifically one sector on each of
24 the towers will provide service to that address that we'll see
25 here.

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Perry - direct

1 THE COURT: Your call could go to any of them?

2 THE WITNESS: That's -- yes, that's what we're going
3 to do here, your Honor.

4 THE COURT: Oh, all right.

5 MR. POSCABLO: I think actually the next slide would
6 really help.

7 THE WITNESS: This will explain.

8 MR. POSCABLO: Yes.

9 BY MR. POSCABLO:

10 Q. So what does this slide show?

11 A. I was fortunate enough to get out there in a reasonable
12 amount of time to conduct a drive test to determine the actual
13 cell towers that provide service to 830 Magenta Street in the
14 Bronx.

15 Q. What does that show? Tell us what you did.

16 A. In essence what a drive test is, it's the same process that
17 a majority of the providers use to determine the actual
18 coverage area for their networks and their cell towers to
19 determine if they have dead spots or if they need to put in
20 additional towers. However, we go into -- most often we have a
21 particular one tower, one sector that we need to focus on, so
22 we end up doing a lot more driving than the provider -- than
23 most of the providers do. And the process is, the GPS is
24 capturing my location every second. What you see here is you
25 see a series of dots and then different color codes. Every

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Perry - direct

1 time you see a dot, that is where I'm physically located based
2 on my GPS. At the same time, in this instance, I'm utilizing a
3 T-Mobile phone and I'm utilizing my drive test software, which
4 is JDSU, and that allows me to capture the cell tower sector
5 that my phone is connected to. So every second I have my
6 location and I capture what cell tower am I connected to.
7 That --

8 Q. You're in the northeast corner, you're capturing through
9 one cell tower reflected in what color?

10 A. Well, the northeast --

11 Q. I'm sorry.

12 A. I mean, northeast south would probably be the best on this.
13 If I'm doing north, the color code is actually green. And that
14 would be tower -- sector 2 and tower 2109. If I'm color coded
15 yellow, that's the coverage area for sector 3 on tower 2243.
16 The color red down on the south part of the map is sector 7 on
17 2059. And the blue color will -- is the coverage area for
18 sector 2 on tower 2050. And as you can see, they all tend to
19 overlap almost right in the vicinity of 830 Magenta Street.

20 Q. Special Agent Perry, that portion of this chart, the
21 different colors on the map, that represents results from your
22 drive test, correct?

23 A. That's my drive test, yes.

24 Q. And is there anything on this that represents some analysis
25 that you did with regards to the calls?

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Perry - direct

1 A. Yes. I conducted a call frequency to determine -- I had a
2 date range that I was advised to focus on from September 2nd
3 to September 4th, so I focused on the amount of call
4 frequencies in which the Philippe -- from Philippe's phone
5 utilizing these towers which have been color coded here for the
6 dates of September 2nd through the 4th, and then I compared
7 that to the amount of times that the Philippe phone used the
8 same towers outside of that, absent that time period.

9 Q. You mean the Dominique Jean-Philippe phone?

10 A. Yes.

11 Q. And what was your finding?

12 A. For the dates of September 2nd through September 4th, I
13 identified 105 phone calls in which the Dominique Philippe
14 phone utilized the cell towers that are represented here in the
15 sectors that are color coded here, the four sectors. Outside
16 of that time frame, when I removed that time frame from
17 starting on August 18, 2012 through September 1st of 2012 and
18 then picking it back up after that, after the 4th, so
19 September 5, 2012 through October 19, 2012, I located 96 calls.

20 MR. POSCABLO: Okay. Ms. Chen, page 8, please.

21 Q. What does that show?

22 A. This is a call frequency between the Philippe phone number
23 and a phone number with the area code of 305.

24 Q. What's the rest of the number?

25 A. 305-709-8402.

E9aldel6

Perry - direct

1 Q. And what does this chart show?

2 A. This is -- what I did here is I -- T-Mobile allows that
3 Connected To column, and I was able to go ahead and filter the
4 call detail records for the Dominique Philippe phone and
5 determined how many times was there contact between the
6 Philippe phone and the 305 number, and again, I broke it out by
7 specific date ranges.

8 Q. Okay. So how many calls from September 2, 2012 until
9 September 4, 2012?

10 A. There was 78. And this does include some text messages.
11 This was just communication, absent geography.

12 MR. POSCABLO: Ms. Chen, number 9, please.

13 Q. What does this chart show?

14 A. I then isolated all the calls between the Philippe phone
15 and the phone number with 305 for the times that the Philippe
16 phone was communicating with those towers that provide service
17 to 830 Magenta Street, and the results here are the dates and
18 times for that call activity.

19 Q. So we may be clear what you're saying, this chart reflects
20 calls made from the Philippe phone while it's in that zone, the
21 830 Magenta Street area?

22 A. Yes.

23 Q. And also calling this 305-709-8402 number?

24 A. That's correct. Where the Philippe phone was located in
25 the vicinity of 830 Magenta Street and in contact with the 305

E9aldel6

Perry - direct

1 number.

2 MR. POSCABLO: Number 18, Ms. Chen.

3 Q. What does this show? This is a new area, right?

4 A. It is. This is the vicinity of the second address I was
5 provided as 801 Neill Avenue in the Bronx, New York.

6 MR. POSCABLO: And Ms. Chen, 19.

7 Q. And what does this show?

8 A. Again, this is the results of my drive test for the
9 particular cell towers that would provide service to the 801
10 Neill Avenue.

11 Q. And similar to the analysis you gave for 830 Magenta, is
12 there any analysis made with regards to the calls relevant to
13 801 Neill Avenue?

14 A. Yes, there is.

15 Q. What is that?

16 A. The Dominique Philippe phone made a total of 17 calls using
17 the sectors highlighted here in red and green, and all of these
18 calls actually occurred on one day, September 4, 2012.

19 MR. POSCABLO: Ms. Chen, slide 24.

20 Q. And you just testified that while the Dominique Philippe
21 phone was in the 801 Neill Avenue range, all of that occurred
22 on September 4th, correct?

23 A. Yes.

24 Q. So what does this chart show?

25 A. This actually is -- again, this is all of the phone calls

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Perry - direct

1 with the communication between the Dominique Philippe phone and
2 the phone number with area code 305, when the Philippe phone
3 was communicating with towers in and around 801 Neill Avenue in
4 the Bronx.

5 Q. And that's the same number you were analyzing in earlier
6 charts.

7 A. That is correct.

8 MR. POSCABLO: The next one, Ms. Chen. 25.

9 Q. This is a different phone, correct?

10 A. Yes, this is the phone for Trevor Cole, Sprint phone.

11 Q. And this is just to show where the Sprint towers are or
12 where the towers are?

13 A. This is to show where the cell towers that were utilized --
14 actually, this is Sprint cell towers in and around 830 Magenta
15 Avenue.

16 MR. POSCABLO: Okay. The next slide, Ms. Chen, which
17 is 26.

18 Q. Similar to your other charts.

19 A. This is the result of my Sprint drive test.

20 Q. Okay. And you did analysis on this one as well, right?

21 A. Yes, I did.

22 Q. And can you explain to the jury what your findings were.

23 A. The results for this, utilizing the same time frame that I
24 did for the Dominique Philippe phone, focusing on
25 September 2nd through September 4, 2012, there was 105 phone

E9aldel6

Perry - direct

1 calls using the sectors here I indicated in the red and the
2 yellow. Excluding that time frame from August 18, 2012 to
3 September 1, 2012, and then again starting on September 5, 2012
4 through November 10, 2012, there was a total of 57 calls.

5 Q. Special Agent Perry, with your work, have you become
6 familiar with the term "retention policy" as it applies to
7 phone records?

8 MR. POSCABLO: You can take it down, Ms. Chen.

9 A. Yes, I am.

10 Q. Okay. What does "retention policy" mean?

11 A. Certain providers will maintain their call detail records
12 for varying lengths of times.

13 Q. And are you familiar with -- let me back up.

14 In your experience are the retention policies
15 different per company?

16 A. Yes, they are.

17 Q. And for a particular company, are the retention policies
18 different for different types of records?

19 A. I'm sorry. Could you repeat your question?

20 Q. Sure. Do some companies retain phone records longer or
21 shorter than they do cell site records?

22 A. Yes, they do.

23 Q. Give me some examples of that.

24 A. There are certain providers who will maintain just the toll
25 records. They can come in -- toll records, in our line of

E9aldel6

Perry - direct

1 work, is all of the call activity of the date and time the call
2 occurred and when, and the numbers that are called, absent the
3 cell site information. So when we refer to often the call
4 detail records with cell sites, that information can be held up
5 to six months, all the way up to six, seven years, with some
6 providers.

7 Q. Are you familiar with the retention policy of Metro PCS?

8 A. Yes, I am.

9 Q. What's their retention policy with regards to toll records?

10 A. They can only go back six months.

11 Q. What about with regards to cell site records?

12 A. Six months.

13 MR. POSCABLO: One moment, your Honor?

14 THE COURT: Yes.

15 MR. POSCABLO: No further questions, your Honor.

16 THE COURT: All right. Thank you.

17 Mr. Pittell?

18 MR. PITTELL: I have a couple questions.

19 THE COURT: All right.

20 CROSS-EXAMINATION

21 BY MR. PITTELL:

22 Q. Good afternoon, Agent Perry.

23 A. Good afternoon, counsel.

24 Q. On the presentation you showed up there, I saw that there
25 was a 305 number up there?

E9aldel6

Perry - cross

1 A. That is correct, sir.

2 Q. Am I correct, though, with all the documents and records
3 you've reviewed, you have no way of determining who was
4 actually speaking on the 305 phone when those calls were being
5 made with the Philippe phone, is that correct?

6 A. Yes, sir, that is correct.

7 Q. And there's no recording of either conversations or
8 messages that may have been left on a voice mail, is that
9 correct?

10 A. I would be unaware. I'm not -- I have no knowledge of that
11 in existence.

12 MR. PITTELL: Thank you.

13 THE COURT: All right. Thank you. You may step down.

14 THE WITNESS: Thank you, your Honor.

15 (Witness excused)

16 THE COURT: Would the government like to call its next
17 witness, please.

18 MS. GERACI: Your Honor, the government calls Jeanette
19 Adams.

20 THE COURT: All right. Ms. Adams to the stand,
21 please.

22 (Continued on next page)

E9AAADEL7

Adams - Direct

1 JEANETTE ADAMS,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. GERACI:

6 Q. Good afternoon, Ms. Adams?

7 A. Good. Afternoon.

8 Q. Where were you born?

9 A. Jamaica.

10 Q. Are you a United States citizen?

11 A. Resident.

12 Q. Permanent resident?

13 A. Yes.

14 Q. Could you speak you just a little bit louder?

15 A. Yes.

16 Q. How old are you, Ms. Adam?

17 A. 50.

18 Q. Are you currently working?

19 A. Yes.

20 Q. Where do you work and what do you do?

21 A. I am a home health aid. I work in Dobbs Ferry.

22 Q. I'd like to direct your attention to the early September of
23 2012. On September 2, 2012 where did you live?

24 A. 830 Magenta.

25 Q. Is that in the Bronx?

E9AAADEL7

Adams - Direct

1 A. Bronx, yes.

2 Q. What was your apartment number?

3 A. Apartment 5E.

4 Q. How long did live in that apartment?

5 A. Almost three years.

6 Q. Did there come a time when you stopped living at the
7 apartment at 830 Magenta Street?

8 A. Yes.

9 Q. And approximately when?

10 A. September -- after the robbery I left.

11 Q. Is that what caused you to move?

12 A. Yes.

13 Q. In early September 201 did you live in the Magenta Street
14 apartment alone or did you live with other people?

15 A. I lived with Patrick, my boyfriend.

16 Q. Patrick James?

17 A. Yes.

18 Q. Does he go by any other names?

19 A. Eugene Brown.

20 Q. And you said he was your boyfriend at the time?

21 A. Yes.

22 Q. How long were you and Mr. James dating before September of
23 2012?

24 A. Four years.

25 Q. And for how long did he live with you at the Magenta Street

E9AAADEL7

Adams - Direct

1 apartment?

2 A. Two years, almost three years.

3 MS. GERACI: Could I ask Ms. Chen and with the Court's
4 permission publish Exhibit 14 first? I'm sorry, your Honor.
5 It's Exhibit 15 which is already in evidence.

6 THE COURT: Yes.

7 Q. Do you recognize that photo?

8 A. Yes. That's me.

9 Q. Who is that?

10 A. Me.

11 MS. GERACI: May I approach, your Honor?

12 THE COURT: You may.

13 Q. Ms. Adams, I have shown you what's marked as Government
14 Exhibit 14. Do you recognize the individual in that
15 photograph.

16 A. Yes.

17 Q. Who is that?

18 A. Patrick James.

19 MS. GERACI: Your Honor, the government offers Exhibit
20 14.

21 THE COURT: I already have that as in but in any
22 event, any objection?

23 MR. PITTELL: I have no objection the second time,
24 judge.

25 THE COURT: Received.

E9AAADEL7

Adams - Direct

1 (Government's Exhibit 14 received in evidence)

2 MS. GERACI: Apologize. Permission to publish, your
3 Honor?

4 THE COURT: You may.

5 (Pause)

6 Q. Ms. Adams, who had a key to your apartment at Magenta
7 Street?

8 A. Patrick James.

9 Q. You had the key as well?

10 A. Yes.

11 Q. Is that the Patrick James that we just saw in the photo?

12 A. Yes.

13 Q. And in addition to your apartment on Magenta Street did
14 Patrick James have any other apartments?

15 A. Yes.

16 Q. Where?

17 A. On Neil Avenue.

18 Q. Do you know the address?

19 A. It's 801 Neil.

20 Q. Is that also in the Bronx?

21 A. Yes, it is.

22 Q. Have you ever been to Mr. James' Neil Avenue apartment?

23 A. Used to live there before we moved to Magenta.

24 Q. What did Patrick James do for a living?

25 A. Sell marijuana.

E9AAADEL7

Adams - Direct

1 Q. Do you know what kind of marijuana he sold?

2 A. Cush.

3 Q. How do you know that?

4 A. Cause I see it.

5 Q. Do you know where he got the marijuana that he sold?

6 A. California.

7 Q. How do you know that?

8 A. Cause he goes there to get it.

9 MR. PITTELL: I am sorry. I couldn't hear that.

10 THE COURT: The court reporter may read the answer
11 back.

12 (Read back)

13 MS. GERACI: May I proceed, your Honor?

14 THE COURT: You may.

15 Q. Ms. Adams, did you assist in any way in Patrick James'
16 marijuana business?

17 A. No.

18 Q. Do you know where Patrick James stored marijuana he was
19 selling back in September 2012?

20 A. Neil Avenue.

21 Q. How do you know that?

22 A. Cause it's the stash house. That's where he kept the drugs
23 and the money.

24 Q. Do you know where he stored -- sorry. Withdrawn.

25 Before you were robbed when was the last time you saw

E9AAADEL7

Adams - Direct

1 Patrick James at your Magenta Street apartment?

2 A. Couple days. Like I saw him like, I forgot. Either
3 Wednesday or Thursday I saw him.

4 Q. And just to be clear, what date did the robbery occur?
5 What day of the week?

6 A. On a Sunday.

7 Q. You saw him the Wednesday or Thursday?

8 A. Yes.

9 Q. Do you know where he went after you saw him?

10 A. He went to his son graduation, something pertaining to his
11 son. I think it's in Georgia or one of those somewhere he
12 went.

13 Q. Do you know whether he came back to the Magenta Street
14 apartment at some point before the robbery?

15 A. Well, the robbers they told me he came there because they
16 said they saw him.

17 MR. PITTELL: Objection.

18 THE COURT: Hold on. Sustained. Why don't you reask
19 the question.

20 BY MS. GERACI:

21 Q. Why did you believe that Patrick James came back to the
22 apartment at some point?

23 A. Because one of the robbers they told me that they saw
24 Patrick came and took clothes from the apartment and left in
25 his car.

E9AAADEL7

Adams - Direct

1 Q. Let me turn your attention to the evening of September 2,
2 2012. What were you doing that evening?

3 A. Well, that evening I went to bingo, me and my sister and a
4 friend.

5 Q. Is that something you did regularly?

6 A. Yes.

7 Q. Who were you at bingo with, specifically?

8 A. My sister and a friend of mine named Grace.

9 Q. Who is Grace?

10 A. Grace is Lisa Hylton mom.

11 MS. GERACI: Permission to publish Exhibit 16, your
12 Honor?

13 THE COURT: Yes.

14 Q. Ms. Adams, do you recognize the individual in the photo?

15 A. Yes.

16 Q. Who is that?

17 A. Lisa Hylton.

18 Q. Is it your testimony this is Grace's daughter?

19 A. Yes.

20 Q. What did you do after bingo that night?

21 A. Well, after bingo we left and stopped at a cookout. And we
22 were there for like 20, 25 minutes cause I have to go to work
23 the next morning. So I was there at the cookout and I take,
24 dropped my sister and Grace home, then I proceed home.

25 Q. And when you say you proceed home --

E9AAADEL7

Adams - Direct

1 A. To Magenta, yeah.

2 Q. Approximately, what time did you arrive home that evening?

3 A. I can't remember. I think it was after ten or around ten.

4 I can't remember but it was like after ten.

5 Q. Let's talk for a moment about your apartment on Magenta
6 Street, what was your apartment number?

7 A. 5E.

8 Q. What floor of the building is that?

9 A. Fifth floor.

10 Q. Are there other apartments in your building?

11 A. Yes.

12 Q. How do you get into the building from the ground floor?

13 A. Through the -- they have two doors. You have to go through
14 one and you have to use the key to go through the other one to
15 get into the building.

16 Q. Is there an elevator in your building?

17 A. Yes.

18 Q. How many bedrooms did your apartment have?

19 A. One.

20 Q. How many bathrooms?

21 A. One.

22 Q. Can you briefly describe the layout of the space when you
23 walk right into your apartment?

24 A. When you walk in you see the kitchen, the living room, the
25 dining room and the hallway. That's where the bedroom and the

E9AAADEL7

Adams - Direct

1 bathroom is at.

2 MS. GERACI: Your Honor, I intend to show the witness
3 several exhibits that are already in evidence, so permission to
4 publish.

5 THE COURT: Yes.

6 MS. GERACI: May I ask Ms. Chen to show the jury
7 Exhibit 100.

8 (Pause)

9 Q. Do you recognize this?

10 A. Yes.

11 Q. What are we looking at?

12 A. Apartment door at Magenta.

13 MS. GERACI: 101, please.

14 (Pause)

15 Q. What are we looking at here?

16 A. Inside my apartment at Magenta.

17 MS. GERACI: 103, Ms. Chen.

18 (Pause)

19 Q. What are we looking at here?

20 A. The living area.

21 Q. Of your apartment?

22 A. Yes.

23 MS. GERACI: 105, please.

24 (Pause)

25 Q. Is this a photo from your apartment?

E9AAADEL7

Adams - Direct

1 A. Yes.

2 Q. Can you tell me if you can see the photo frame in the
3 picture, who is in that picture?

4 A. Yeah, Patrick.

5 MS. GERACI: 106, please.

6 (Pause)

7 Q. What are we looking at here?

8 A. That's the bathroom and the bedroom.

9 MS. GERACI: 109, please.

10 (Pause)

11 Q. What area of the apartment is this?

12 A. The bedroom.

13 MS. GERACI: 110, please.

14 (Pause)

15 Q. What is this?

16 A. Bedroom.

17 MS. GERACI: 111, please.

18 (Pause).

19 Q. Still the bedroom?

20 A. Yes.

21 MS. GERACI: And lastly, 116.

22 (Pause)

23 Q. What area is this?

24 A. The bathroom.

25 Q. Ms. Adams, on the evening of September 2, 2012 when you

E9AAADEL7

Adams - Direct

1 came home to Magenta Street after bingo and the cookout, how
2 did you get to your apartment on the fifth floor?

3 A. Take the elevator.

4 Q. When you get out of the elevator on the fifth floor which
5 way do you go to your apartment?

6 A. I have to turn left.

7 Q. And on the evening of September 2, 2012, what did you do
8 when you got off the elevator on the fifth floor?

9 A. I got off the elevator, walk to my apartment but the exit
10 door was opened. So I stuck my head through the exit cause
11 it's a habit of me if it's open I am going to look. So when I
12 looked I saw two gentlemen standing on the step.

13 Q. Could you tell -- could you see their faces?

14 A. Yes.

15 Q. Did you recognize either of them?

16 A. No.

17 Q. Could you tell their race or ethnicity?

18 A. Black.

19 Q. And what, if anything, were the two men holding or
20 carrying?

21 A. They had two guns.

22 Q. One each?

23 A. Yes.

24 Q. What color were the guns?

25 A. Silver.

E9AAADEL7

Adams - Direct

1 Q. Are you at all familiar with guns?

2 A. No.

3 Q. So you have no idea what kind of guns?

4 A. No.

5 Q. Did either of the men say anything to you?

6 A. Yes. They asked me for the key to the apartment.

7 Q. Did the men who said something to you have any kind of
8 accent?

9 A. Jamaican accent.

10 Q. What, if anything, do you do in response?

11 A. Well, I gave him the bag, my pocketbook cause I told him
12 the key was in there.

13 Q. And what happened next?

14 A. Well, he went to the door and he tried to open the door but
15 I have an alarm, so the alarm went off. So he came back and
16 get me and bring me into the apartment to disarm the alarm,
17 which I did.

18 Q. And what happened after you were inside the apartment and
19 you disarmed the alarm?

20 A. They told me that they're here to get the drugs and money.

21 Q. Whose and money did you think they were looking for?

22 A. Patrick.

23 Q. Did you respond to them?

24 A. I told them there was no drugs and money here.

25 Q. What happened next?

E9AAADEL7

Adams - Direct

1 A. I can't quite remember. I remember they put me in the
2 bedroom at one point.

3 Q. What were they doing while you were in the bedroom?

4 A. They were, cause I have stuff packed in the boxes I was
5 about to move. I was moving. So I have stuff pack up and they
6 were searching the boxes. And you know they were on the phone.
7 They were on phone talking to whosoever they were talking to on
8 the phone and they were searching up the apartment cause they
9 were looking for the drugs and money which I told them there
10 was none here.

11 Q. At some point did you try to resist them?

12 A. Yes. At one point I tried to lock them out. But what
13 happened as I was standing there and I have a box where the fan
14 was standing on, so the box fell between the door so I couldn't
15 lock them out.

16 Q. What door where you talking?

17 A. My bedroom door.

18 Q. You are in the bedroom and you tried to close the door?

19 A. Yes.

20 Q. And a lock stopped you?

21 A. Yeah.

22 Q. Did they do anything in response to that?

23 A. Yes. They -- cause I have some tape from the U-haul that I
24 used to tape up the box, they used it to tape my, both my arms
25 together and put a sock in my mouth cause I was talking a lot

E9AAADEL7

Adams - Direct

1 so they put a sock in my mouth and tape up my mouth.

2 Q. They taped you with packing tape?

3 A. Yes.

4 Q. What happened next?

5 A. So I tried to pull -- I keep pulling the tape off cause it
6 wasn't strong enough, so I keep pulling it off. And one of the
7 guys said to the other guy I must go to Rite Aid and get a duct
8 tape.

9 Q. Do you know who he said that to?

10 A. No, I don't know but he said to somebody go to Rite Aid and
11 get the duct tape.

12 Q. What was the next thing you remember?

13 A. They were -- remember, I know they were in and out. I
14 don't know how much of them but they were in and out and
15 eventually the guy came back with the tape.

16 Q. Someone came back the with the tape?

17 A. Yes.

18 Q. What did he do with the tape?

19 A. Well, they taped both my arms, my two feet and my mouth.
20 They didn't -- they taped my arms, my feet, my mouth and they
21 taped my eyes.

22 Q. Did they say anything to you?

23 A. No. Well, you know they wanted me to call Patrick to come
24 to the apartment.

25 Q. And whose phone did they want you to use?

E9AAADEL7

Adams - Direct

1 A. Well, they took my phone cause they had my phone. They
2 took my cellphone, so they wanted me was to call him.

3 Q. And do you recall your cellphone number at that time?

4 A. Yes.

5 Q. What was it?

6 A. (917)574-2074.

7 Q. Could that cellphone make long distance, out-of-state or
8 international calls?

9 A. Canada.

10 Q. And did you, in fact, use your phone to call Patrick?

11 A. No.

12 Q. What did you do?

13 A. Well, they wanted me was to give them, to tell them the
14 number but Patrick had a number there that he had before but
15 that number was it disconnected. So I told them that was the
16 number.

17 Q. How did you tell them that is the number?

18 A. Because was under a name Pat Eye, so I told them that his
19 number is in the phone under Pat Eye.

20 Q. And that is a contact in your phone?

21 A. Yes.

22 Q. And when you say "Pat Eye", P-A-T E-Y-E?

23 A. Yes.

24 Q. Did they dial that number?

25 A. But it was disconnected.

E9AAADEL7

Adams - Direct

1 Q. What's the next thing you remember?

2 A. The next thing I remember they had put me on the floor to
3 lay down and they were there whispering. And the guy said to
4 me, mommy, you need to get Patrick upstairs cause they need to
5 get money and they wanted to get the money from Patrick. They
6 want \$250,000 from Patrick and they wanted me was to -- they
7 had me on the floor there. They raped me because they want me
8 was to get Patrick.

9 Q. Do you know how many people raped you?

10 A. Three of them raped me. I don't know who it is but three
11 of them raped me and urinated on me. One of them urinate on my
12 head, my face.

13 Q. Did anyone give you anything to eat, Ms. Adams?

14 A. Yeah. One of them, the Jamaican one with the Jamaican
15 accent because he was the one that was corresponding with me
16 because he's telling me that his boss, his boss wanted the
17 money from Patrick and they want me to bring Patrick upstairs
18 and --

19 Q. Did any of them say anything to you when they were raping
20 you?

21 A. Yeah. One of them asked me if Patrick do it better than
22 this, if Patrick do it better.

23 Q. Could you see anything at this time?

24 A. No.

25 Q. Why?

E9AAADEL7

Adams - Direct

1 A. Because my eyes were duct taped.

2 Q. How were your eyes duct taped?

3 A. They wrapped it around like this.

4 Q. After you were raped, what happened?

5 A. I was lying there on the floor and one of them put my
6 underwear back on and I was laying there on the floor and at
7 one point they took me out the bedroom and take me to bathroom
8 into the tub. And they turned the cold water on, poured the
9 Mr. Clean cause I was in the tub and they poured the Mr. Clean.
10 And at no time one point they had this, a girl was in my
11 bedroom and they were having sex on the bed. And she was
12 making the sex sound. And they were watching porno in the
13 room, smoking marijuana and cigarettes and having a good time.
14 Cause I don't know they were in and out the door cause each
15 time they go through the door the alarm it make the sound and
16 they were inside if there in and out and eventually because at
17 that point I didn't want to tell them because I figured they
18 was going to kill me when Patrick come they were going to kill
19 me if Patrick there.

20 MR. PITTELL: Objection.

21 THE COURT: Overruled.

22 Q. Ms. Adams.

23 A. Cause you know I thought they were going to kill me and
24 Patrick when they get the money and stuff like that. So I am
25 there eventually, eventually you know I tell them, OK, his

E9AAADEL7

Adams - Direct

1 number in the phone is Patrick James.

2 Q. You gave them the real number?

3 A. Yes.

4 Q. What was the real number? Do you remember it?

5 A. Yeah. 201-916-0824 and so the guy told me to call him.

6 Q. How were you able to call him?

7 A. What?

8 Q. How was the call made?

9 A. They dialed the number cause I told them what the number
10 was and but I didn't told them the number. I told them the
11 name.

12 Q. The contact?

13 A. Patrick, yes.

14 Q. And were your hands still on bound?

15 A. Yes, cause I was still in the tub.

16 Q. Did they rebind your feet?

17 A. Yes. They tied my feet back after they raped me they duct
18 taped my feet back.

19 Q. Do you have any idea how many people were in the apartment?

20 A. No.

21 Q. Could you hear any voices?

22 A. They were whispering. They were whispering. I don't know
23 if it's 20, 30 but they're always whispering, whispering. They
24 were in and out.

25 Q. And you could hear female voice at some point?

E9AAADEL7

Adams - Direct

1 A. Yes.

2 Q. And when you say they were in and out how could you tell
3 they were coming in and out, assume you meant?

4 A. What?

5 Q. Do you mean they were coming in and out of apartment?

6 A. Yes.

7 Q. You could tell how?

8 A. Because by going through the door the alarm, each time you
9 go it make a sound.

10 Q. Approximately, when did they make the call to Patrick with
11 your phone?

12 A. Well, after they raped me and put me in the tub the guy he
13 came in there and I decide cause I am saying, listen, I am
14 going to die. So ain't no use in my sitting here waiting any
15 longer so I told him Patrick James and then he went back
16 outside and they were whispering and then he came back and
17 dialed the number and I called Patrick.

18 Q. And the phone was able to reach Patrick? You could hear
19 him?

20 A. Yes, cause they put it close to me cause they took the tape
21 off my mouth and I spoke to Patrick.

22 Q. What did you say?

23 A. I called him and I said to him that I need money to go pick
24 up my medication cause I to Rite Aid. He came but he didn't
25 come upstairs.

E9AAADEL7

Adams - Direct

1 Q. How do you know he didn't come upstairs?

2 A. Because he called me and he called the phone cause you
3 know, cause I keep getting calls but I don't if they were
4 answering but I was at the time getting calls. And Patrick
5 called the phone and they told me, well, one of the guys, the
6 Jamaica guy say, mommy, Patrick calling and they put the phone
7 to my ears and I said I need money to go pick up my
8 prescription to Rite Aid. So he told me that he left the money
9 in the windshield wiper downstairs. It's my car.

10 Q. What happened next?

11 A. Well, they went down there and they took money from the car
12 from there and then. But Patrick told me he was coming the
13 following day. He was going down Manhattan and when he comes
14 back he would come there to see me.

15 Q. Do you know what day it is at this point?

16 A. No.

17 THE COURT: How long a period of time has elapsed
18 between the time that you were confronted on the Sunday night
19 and the time that you were raped?

20 THE WITNESS: Well, I don't know if it's the -- I
21 don't know if it's the next day or but I know it wasn't the
22 same night that they kidnapped me. I think it was -- I don't
23 know if it's the following day or late in the night. I don't
24 know what time it is cause you know my face was, you know I
25 don't know the time.

E9AAADEL7

Adams - Direct

1 THE COURT: And then how much -- do you have any sense
2 about how long it was after that you spoke with Patrick and
3 told him to drop off the money?

4 THE WITNESS: It was like maybe the following day I
5 guess I spoke to him.

6 THE COURT: All right.

7 THE WITNESS: But he came -- when I called I think it
8 was the following day or late in the night but whatever time it
9 was I spoke to him he told me that. I asked him to bring the
10 money but he didn't come upstairs. He left it in the car so I
11 don't know if -- I don't really know.

12 THE COURT: Just trying to get a sense of the elapsed
13 time.

14 MR. PITTELL: Judge, her head was turned into the
15 microphone.

16 THE COURT: Let me have the court reporter then read
17 back from the time that I began asking questions of up until
18 this page. Thank you.

19 (read back)

20 MR. PITTELL: Thank you.

21 Q. Ms. Adams do you have any sense of, approximately, when you
22 were able to make the call to Patrick's actual cellphone
23 number?

24 A. No, I don't know.

25 Q. What's the next thing you remember after making the call

E9AAADEL7

Adams - Direct

1 and asking him to come?

2 A. Well, he brought the money, calls me, he called back and he
3 told -- well, he called me, he called back and they let me
4 speak to him on the phone. He told me he left the money on the
5 windshield wiper downstairs. He's not going to come upstairs
6 but because he already left but he was going to come and see me
7 the following day because he's going to Manhattan and after he
8 leave Manhattan he who would come up and see me.

9 Q. Could you tell what the robbers were doing as you were
10 sitting there waiting?

11 A. Well, they were -- I don't know. They were up in the
12 apartment. I don't know what they were in there doing.

13 Q. Had you and Patrick been fighting at any point?

14 A. Yes. We, we -- yeah, we were fighting the week, the same
15 week we had the fight before he left to visit his son.

16 Q. Did you recognize any of the voices you were hearing?

17 A. No.

18 Q. Do you know why you were moved from the bedroom to the
19 bathroom?

20 A. Because they wanted to bring the girl in so because after
21 they removed me and put me in the bathroom that's when the girl
22 came.

23 Q. At some point did you speak to Patrick again?

24 A. Yes. The next day I think it's morning or the afternoon
25 because they already know that he was coming to see me after he

E9AAADEL7

Adams - Direct

1 left Manhattan so they keep telling me to call him to see
2 where's at. And call him and eventually they told me that he
3 was on his way up to, I told him to bring me something to eat.

4 Q. What did you tell him to bring you?

5 A. Stewed chicken end rice.

6 Q. Why did you ask him to bring that?

7 A. Because I don't like that. And to bring me soda, Pepsi.

8 Q. Why did you ask that?

9 A. I don't like Pepsi.

10 Q. Why did you ask for that?

11 A. Because I am trying to give him a clue that something is
12 wrong but he is so angry because we had a fight and stuff, so.

13 Q. Did you notice if any of the robbers were wearing gloves?

14 A. I couldn't tell if they were wearing gloves cause my eyes
15 were duct taped.

16 Q. What's the next thing you remember happening?

17 A. OK. Cause I am still in the bathroom in the tub and this
18 is a waiting game. They were back and forth. I guess they
19 were looking through the window cause you could see through the
20 window I guess they probably was looking through the window
21 waiting to see --

22 MR. PITTELL: Objection.

23 THE COURT: Sustained. So I'm going to ask you to not
24 to speculate.

25 A. They were going back and forth.

E9AAADEL7

Adams - Direct

1 MR. PITTELL: Could we just maybe move the microphone
2 a little.

3 THE COURT: Maybe pull your chair up a little bit
4 more. Thank you.

5 Q. Ms. Adams, how could you tell what they were doing?

6 A. Cause they were walking. I heard feet walking back and
7 forth. And the guy, one of the guys said to me, the Jamaican
8 guy, the one that is corresponding with me said to me, he told
9 me Patrick is coming. He said to me, mommy, don't make no
10 sound. Just relax. That's what he told me.

11 Q. Did he do anything after that?

12 A. No. They were there waiting. So Patrick came through
13 cause I heard when the door opened and whatever they had he put
14 it on the floor. And they were --

15 Q. How do you know they put it on the floor?

16 A. Whatever he had, the box he dropped it on floor and all of
17 them run to him and he scream out and he said to me, Jeanette,
18 you set me up. That's what I heard he saying. And they start,
19 they take him to the bedroom and they were beating him in
20 there. And he was there crying out a lot of noise cause they
21 were beating him so bad in there. And at one point one of the
22 guys came to me and said to me cause I guess they asked him for
23 money and he told them I don't remember if it was his cousin or
24 his brother and they came to me and they asked me, who is that
25 guy? And I said, well, his cousin.

E9AAADEL7

Adams - Direct

1 Q. Just to be clear, somebody came to you and asked you --

2 A. Who is that guy was because Patrick -- I guess Patrick told
3 him that's the guy who had the money.

4 Q. And you said that that person was Patrick's cousin?

5 A. Yeah. I can't remember if it was I told them cousin or his
6 brother. But I don't quite remember who I said it was but they
7 came and asked they wanted to know, if I know who it was?

8 THE COURT: Ms. Geraci, you need to go back. I don't
9 understand exactly but rather than me clarifying it, why don't
10 you clarify how the information arrived that there was another
11 person and then the question about the brother or the relative
12 whose talking to whom about what when.

13 MS. GERACI: Yes, your Honor.

14 Q. Let's just back up a little bit, Ms. Adams. You, at some
15 point one of the robbers came to you and asked you a question?

16 A. Cause they, whatever Patrick told him who have the money.
17 So they come to ask me if I know that person who Patrick told
18 them have the money before whatever money he had asked Patrick
19 for, I guess he told them that that guy, his cousin or his
20 brother have the money so they came and they asked me.

21 Q. Why did you think they were asking you that?

22 A. Because Patrick told them that's the guy who have the money
23 to keep his money, I guess.

24 Q. So --

25 A. So they came and they asked me. I told him, yes, Patrick.

E9AAADEL7

Adams - Direct

1 MR. PITTELL: Objection.

2 THE COURT: Overruled.

3 MR. PITTELL: Objection as to what Patrick said.

4 THE COURT: Overruled.

5 Q. So they came and asked you who this is and you said it is
6 either a cousin or something like that?

7 A. Yeah.

8 Q. What's the next thing you remember?

9 A. The next thing they were in there beating him up so bad and
10 then after a while I know at one point I don't know but
11 somebody left through the door and somebody was left back in
12 the apartment cause they were still in the bedroom beating
13 Patrick from the time they left till they came back.

14 Q. And that's what you could hear.

15 A. Yes.

16 Q. Where were you this whole time?

17 A. In the tub.

18 Q. At some point did you hear anyone come back into the
19 apartment?

20 A. Yeah. They came back in and they start cleaning up,
21 mopping, wiping down stuff.

22 Q. How could you tell?

23 A. Because they were in the bathroom washing the mop in the
24 sink. I could hear and pouring Mr. Clean cause I could smell
25 the Mr. Clean.

E9AAADEL7

Adams - Direct

1 Q. And you could smell that in the bathroom as well?

2 A. Yes.

3 Q. Approximately, how long did it take -- did you think the
4 robbers took to clean?

5 A. Couldn't tell.

6 Q. What's the next thing you remember?

7 A. OK. The next thing I remember the, one of guys, one of the
8 robbers this one I was corresponding he came and he told me
9 that he didn't get all the money and he gave me the knife said
10 to me, I am going to leave the knife and you could free
11 yourself and if you want to you could also free Patrick.

12 Q. Did anyone touch you in any other way?

13 A. Yeah. One of them when they were leaving, I remember one
14 of them punched me in the side of my face. I don't know who it
15 was but somebody punched me in the side of the face.

16 Q. Where did they leave? Did you say they left you a knife?

17 A. Yeah, the guy.

18 Q. Where did they leave it?

19 A. Well, I was in the tub and he gave it to me and he said to
20 me that. He gave me the knife and he told me that I could free
21 myself.

22 Q. Do you know who punched you?

23 A. No.

24 Q. Were you able to free yourself?

25 A. Yes.

E9AAADEL7

Adams - Direct

1 Q. How were you able do that?

2 A. Well, I put the knife in my mouth and I used it to cut the
3 tape from my arm and then I released, cut -- even now I still
4 have the tape burn around my ankle here. And then I get out
5 the tub and I peep inside cause after at one point I didn't
6 hear Patrick any more. So when I peeped in I saw him. They
7 tied his hand behind his back. He's naked and he's bleeding
8 and I free him, release the tape and I and then I said to him
9 that we weren't going to call the police.

10 Q. Why did you say that?

11 A. Because it was drugs and I know it was drug related. So I
12 was afraid that I would get in trouble, you know. And then I
13 called my sister cause I have the landline phone and I called
14 my sister and I said to her that I am here two and a half day,
15 three days. They kidnapped me here and nobody came to see if I
16 am OK or not and then my sister came and she is the one who
17 called the cops.

18 Q. Your sister called or someone else?

19 A. Either my sister or my niece.

20 Q. They called 911?

21 A. Yes.

22 Q. Let just back up really quickly. Can you describe what you
23 saw Patrick and what you were thinking?

24 A. I saw him there. I thought they raped him also too and I
25 was going to left him there cause I am so mad because of him

E9AAADEL7

Adams - Direct

1 it's why I am in this predicament and all of that and --

2 Q. How was he tied up?

3 A. With his arm and his feet together they tied.

4 Q. Behind his back?

5 A. Yeah.

6 Q. Was he bleeding?

7 A. Yes, he is bleeding in his head and his arm.

8 Q. What did you think when you saw him?

9 A. I felt so bad for him. I was going to leave him there,
10 trust me.

11 Q. Cause you were angry?

12 A. Cause I was angry and raped they raped me. They, you know
13 urinated on me cause of Patrick money, you know, the drugs and
14 the money. I could have lose my life. I am sitting there
15 wondering if I am going to die. You know, it was terrible.

16 MS. GERACI: Can with the Court's permission may I ask
17 Ms. Chen to publish Exhibit 113 which is already in evidence?

18 THE COURT: Yes.

19 Q. Ms. Adams, do you recognize that?

20 A. Yes.

21 Q. What is it?

22 A. Duct tape and the duct tape.

23 Q. Is it just duct tape or is there other stuff thee?

24 A. Clothes, yes, clothes.

25 MS. GERACI: Could we show 117, please.

E9AAADEL7

Adams - Direct

1 (Pause)

2 Q. Do you recognize that?

3 A. Yes.

4 Q. What is that?

5 A. Well, the black thing I know it was my tights that I had on
6 and the rest I can't quite.

7 Q. It's a little blurry?

8 A. Yeah.

9 Q. Ms. Adams, at some point did the police come to your
10 apartment?

11 A. Yes.

12 Q. Do you have any idea when?

13 A. The following day, I guess.

14 Q. Was it night time or morning?

15 A. Morning.

16 Q. Did you speak to the police?

17 A. Yeah.

18 Q. Did you tell the police about the robbery?

19 A. No. I'm not one -- I wasn't the one who, Patrick told them
20 about the robbery.

21 Q. Are there things you never told the police?

22 A. I never told them about the rape.

23 Q. Why didn't you do that?

24 A. Because I was ashamed and I just didn't want nobody to know
25 that I got raped.

E9AAADEL7

Adams - Direct

1 Q. Did you ever take a shower?

2 A. No, I didn't take a shower.

3 Q. Not that fight?

4 A. No. I just took the clothes and just changed into a
5 different clothes.

6 Q. Did you go to the hospital that night?

7 A. Yes.

8 Q. Do you know where Patrick went? Did he also go to the
9 hospital?

10 A. Both of us went to the hospital.

11 Q. How did you get there?

12 A. Ambulance.

13 Q. Were you treated for injuries?

14 A. Yes.

15 Q. Did you tell the doctors everything that happened to you?

16 A. I just didn't tell them about the rape.

17 Q. Why not?

18 A. Because I just didn't want. I just didn't want nobody to
19 know I got raped.

20 Q. Do you know how long you were at the hospital,
21 approximately?

22 A. Couple hours like about five about four or five hours we
23 were there.

24 Q. Did you go back to your Magenta Street apartment that
25 night?

E9AAADEL7

Adams - Direct

1 A. No. We went to a motel and stayed.

2 Q. At some point were you able to determine what, if anything,
3 the robbers stole from you?

4 A. Yeah. They took my car and my pocketbook.

5 Q. Louie bag?

6 A. Yeah. And I had change in a big bottle of change,
7 quarters, nickels and dimes, they took it.

8 Q. What kind of a car did you have?

9 A. A Rolls.

10 Q. What color was it?

11 A. Gray.

12 MS. GERACI: May I approach, your Honor?

13 THE COURT: Yes.

14 Q. Ms. Adams I'm showing you what's marked as Government
15 Exhibit 300. Do you recognize this image?

16 A. Yes.

17 Q. What is that?

18 A. My car again.

19 Q. Is that the car you were talking about that the robbers
20 stole?

21 A. Yes.

22 MS. GERACI: The government offers Exhibit 300.

23 THE COURT: Mr. Pittell.

24 MR. PITTELL: Want to take a quick peak. No
25 objection.

E9AAADEL7

Adams - Direct

1 THE COURT: Received.

2 (Government's Exhibit 30 received in evidence)

3 MS. GERACI: Permission to publish, judge?

4 THE COURT: Yes.

5 (Pause)

6 Q. When did you notice that your car had been stolen?

7 A. The following day.

8 Q. At some point did you get it back?

9 A. The police found it, yeah.

10 Q. I want to just go back to injuries that you suffered. Did
11 the duct tape cause you any injuries?

12 A. Yeah.

13 Q. What kind of injuries?

14 A. Like burn on my wrists and around my ankle here.

15 Q. Did you get any medication for that?

16 A. Yeah antibiotic cream.

17 Q. And what injuries were you treated for at the hospital?

18 A. For the burn, the duct tape.

19 Q. The duct tape burns?

20 A. Yes. Cause I didn't tell them about the rape so.

21 Q. Did there come a time later when you went back to your
22 apartment on Magenta Street?

23 A. Yes.

24 Q. Approximately, when?

25 A. Two days after, I guess.

E9AAADEL7

Adams - Direct

1 Q. And when you went back there what, if anything, did you
2 find?

3 A. A bag with cigarette butts ad all that, cigarettes. They
4 were smoking.

5 Q. And what did the bag look like?

6 A. It's black, one of those black plastic bags.

7 Q. Do you know everything that was in the bag or just what you
8 just stated?

9 A. Just cigarette.

10 Q. Did you look through the bag?

11 A. I just opened it and see the cigarette butt.

12 Q. Did you recognize it as not being yours?

13 A. Yes.

14 Q. What did you do with the bag?

15 A. I called the police.

16 Q. I'm sorry?

17 A. I called and told police that I found a bag with cigarette
18 butts.

19 Q. What happened next?

20 A. They sent somebody to get it.

21 Q. You mentioned that some of the items that were stolen
22 included a Louis Vuitton bag. Did you ever see that bag again?

23 A. Yes.

24 Q. Where did you see it?

25 A. Facebook in a picture. Lisa Hylton daughter was holding

E9AAADEL7

Adams - Direct

1 it.

2 Q. Ms. Adams, did there come a time when you were shown
3 photographs by the police in connection with this robbery?

4 A. What.

5 Q. Were you ever shown photographs by police in connection
6 with this robbery and kidnapping?

7 A. Yeah.

8 Q. Were you able to recognize anyone in the photographs?

9 A. Just the two guys that was on the steps. Nobody else.

10 MS. GERACI: One moment, please?

11 THE COURT: All right.

12 MS. GERACI: Thank you, Ms. Adams.

13 THE COURT: All right. Thank you.

14 Mr. Pittell.

15 MR. PITTELL: Thank you.

16 CROSS-EXAMINATION

17 BY MR. PITTELL:

18 Q. Good afternoon, Ms. Adams.

19 A. Yeah.

20 Q. Ms. Adams, my name is Jeffrey Pittell. I am the attorney
21 for the man sitting here to my left, David Delva. We've never
22 met before; is that correct?

23 A. Yes.

24 Q. We've never spoken by the telephone; is that correct?

25 A. Yeah.

E9AAADEL7

Adams - Cross

1 THE COURT: I'm going to actually ask for you to turn
2 the mic a little bit to the left and that way.

3 Q. But I take it you understand that I am here to ask you some
4 questions about what happened?

5 A. Yes.

6 Q. I take it that this robbery and the rape was a traumatic
7 event in your life?

8 A. Yes.

9 Q. And so it occurred a little over two years ago during the
10 Labor Day weekend?

11 A. Yes.

12 Q. And you've indicated that it occurred more or less during a
13 three day period starting on Sunday night until Tuesday?

14 A. Yes, Tuesday night.

15 Q. Tuesday night. And during most of this time you were
16 blindfolded?

17 A. Yes.

18 Q. And actually blindfolded by having tape put over your eyes?

19 A. Yes.

20 Q. And you were tied up?

21 A. Yes.

22 Q. And I guess you've indicated it was your wrists were taped
23 together?

24 A. Yes.

25 Q. And was it in front or behind?

E9AAADEL7

Adams - Cross

1 A. The front.

2 Q. And your ankles were all taped up too?

3 A. Yes.

4 Q. And it was so tight that I guess it, you said it burned our
5 wrists or something at the hospital?

6 A. Yes.

7 Q. That was because of the tightness or the tape?

8 A. Well, the tightness and trying to free my -- trying to pull
9 myself, so it rubbed my skin off.

10 Q. So your skin was irritated at some point during this three
11 day period also?

12 A. Yes.

13 Q. And you were -- is my understanding correct you were
14 deprived of food during this time period?

15 A. Yes.

16 Q. In fact during a portion of this a sock was in your mouth
17 and tape?

18 A. That was earlier.

19 Q. So that eventually came off?

20 A. Yes.

21 Q. And am I understanding correctly that you were not given
22 opportunities to use the toilet?

23 A. No.

24 Q. And I am sorry to inquire but I take it you even had to
25 soil yourself?

E9AAADEL7

Adams - Cross

1 A. Right, on the floor because they wouldn't let me go to the
2 bathroom.

3 Q. You indicated that at some point during this ordeal you
4 were beaten or hit by one of these men?

5 A. Yes.

6 Q. And you said they were whispering but were there times when
7 they were yelling and talking to you in loud vices?

8 A. Just one guy, the Jamaican, with the Jamaican accent, he's
9 the only one who really corresponded. They were all
10 whispering. Whosoever was in the apartment I couldn't tell if
11 it's 20, 50, 30 I couldn't tell. They were all whispering I
12 only spoke to that one guy.

13 Q. Was he ever yelling to you or talking to you in a loud tone
14 of voice?

15 A. Sometimes.

16 Q. You've indicated that one of these men urinated on you?

17 A. Yes.

18 Q. And then you've indicated that you were raped by three men?

19 A. Yes.

20 Q. I apologize in advance, Ms. Adams, but I need to ask you
21 some questions about the rape. You said it was by three men.
22 Was it three different men?

23 A. Three mens, three different men but I couldn't see their
24 face but I know it was three of them raped me. I don't want to
25 talk about the rape. I don't want to talk about it. This is

E9AAADEL7

Adams - Cross

1 the main reason why I didn't report it because I don't want to
2 talk about it, please.

3 THE COURT: Ms. Adams, I know it's hard but we're
4 going to have to talk about it at least to a certain extent.
5 So I am going to allow Mr. Pittell to ask this question, all
6 right.

7 Mr. Pittell, why don't you reask the question.

8 Q. Were you raped by three different men?

9 A. I -- yeah, I guess so, three men.

10 Q. It was not the same men?

11 A. I couldn't tell because I was blindfold and I couldn't tell
12 if it was the same guy that raped me three times but it's, I
13 know it was three different guys raped me, three of them.

14 Q. Was it one right after the other?

15 A. Yes.

16 Q. And this occurred in your bedroom?

17 A. In the bedroom on the floor.

18 Q. And so when the rape started were you already on the floor
19 of the bedroom?

20 A. I was on the floor at all time.

21 Q. All right. So at some point one of the men came into the
22 room and raped you?

23 A. They came. At one point the Jamaican guy came in and he
24 said to me, mommy, you need to tell me, get Patrick up here
25 cause him can't help me any more. And I turned to him and said

E9AAADEL7

Adams - Cross

1 to him you saw, you guys saw Patrick. Why you didn't get
2 Patrick? Why you waiting on me to get to Patrick. You saw
3 Patrick. Then he left and then somebody came in the room cause
4 they wasn't making -- just at one point one of them said to me
5 asking me if Patrick sex me better than him do.

6 Q. Ms. Adams, I realize you don't want to answer these
7 questions but I need to ask you some questions just simply
8 about the sequence of events. So while you were lying on the
9 floor I take it one man came in and raped you; is that correct?

10 A. Yeah.

11 Q. And then when that man was finished did that man leave the
12 room and another man came in and raped you?

13 A. I don't know if the three of them were standing there
14 waiting one at the time. But I know they raped me. I don't
15 know if they leave or stand there but I know when one finish
16 one came and when the other one finish the other one came and
17 three of them raped me. Three of them raped me. Three of them
18 raped me. I don't know if I am HIV because I didn't get
19 tested. Come on. You crazy? They raped me. They tried to
20 get to Patrick. They saw Patrick. They didn't take Patrick
21 because I don't sell drugs and I don't have money. I work.
22 Even though I talk to a dealer, a drug dealer I don't have
23 any -- I told them they should have take Patrick. They
24 shouldn't rape me to get to Patrick. They should do what they
25 did to me because Patrick was there. They saw Patrick and all

E9AAADEL7

Adams - Cross

1 of them they are waiting on me, the weak link. Why?

2 Q. Ms. Adams, going back to my question, Ms. Adams, could you
3 tell whether or not the first man left the room when the second
4 and --

5 A. I don't know if he left cause I was blindfolded. They have
6 they fund and they get up and they leave. They were having
7 fun, yeah.

8 Q. So, Ms. Adams, is the answer you can't tell?

9 A. I can't tell if they were in the room or when they finished
10 they left or whatever.

11 Q. Then when the third man came --

12 A. The third man came and he had his fun and he said to me oh,
13 did Patrick do it like this? No. Patrick did it better.

14 Q. Other than the third man, did any of the other men speak to
15 you?

16 A. No.

17 Q. Now, I take it that well -- withdrawn. You said this whole
18 incident started on a Sunday night; is that correct?

19 A. Yes.

20 Q. And so you had been up all day Sunday and played bingo
21 Sunday night and were then coming home late Sunday night; is
22 that correct?

23 A. If I was what? If I did what?

24 Q. Were you up during the day on that Sunday?

25 A. Yes.

E9AAADEL7

Adams - Cross

1 Q. OK. And then you went out and played bingo?

2 A. Yes.

3 Q. And then so when you came home Sunday night it had been,
4 after being up during the day and then being out at night; is
5 that correct?

6 A. Yes.

7 Q. And then I take it you didn't get much sleep from the time
8 this incident started on Sunday?

9 A. I never slept. From they kidnapped me I never slept.

10 Q. So you were awake, deprived of sleep during the entire
11 time?

12 A. I was alert. I wasn't deprived. I know exactly what they
13 do because you know what? I was thinking about I am going to
14 lose my night. They are going to kill me. They are going to
15 bring Patrick to kill me, so.

16 Q. So you did not sleep from Sunday night until Tuesday?

17 A. Yes.

18 Q. Now, you indicated that you were blindfolded; is that
19 correct?

20 A. Yes, I was.

21 Q. And the blindfold was on the entire time?

22 A. Yes.

23 Q. And what was the blindfold made out of?

24 A. Duct tape.

25 Q. Like the silver?

E9AAADEL7

Adams - Cross

1 A. The silver duct tape.

2 Q. So when that duct tape was over your eyes you couldn't see
3 anything?

4 A. No.

5 Q. So I take it you couldn't tell whether it was actually
6 daytime or night time?

7 A. No.

8 Q. And likewise if you had a watch on you wouldn't be able to
9 look at that watch and tell what time was?

10 A. No.

11 Q. And you wouldn't be able to look outside to see whether
12 it's daylight or nighttime out?

13 A. No, I couldn't tell if it's day or night cause I was in
14 permanent darkness with the tape over my eyes.

15 Q. So I take it that between you being blindfolded, not having
16 any sleep, not having food, it's pretty much impossible for you
17 to say at what time certain things occurred; is that correct?

18 A. I don't know what time it occurred. I don't know what time
19 it occurred cause I could not tell the time. I was
20 blindfolded. I didn't have a watch. And if I even have a
21 watch I wouldn't worry about looking at the because I am
22 thinking I am going to lose my life at Patrick came in that
23 apartment.

24 Q. So, for example, if I ask you do you know what time it was
25 when you were raped there's no way you could tell?

E9AAADEL7

Adams - Cross

1 A. No.

2 Q. And if I asked you whether it was daylight outside you
3 wouldn't be able to tell us that?

4 A. No.

5 Q. And if I asked you if it was dark outside you wouldn't be
6 able to tell us that?

7 A. No.

8 Q. Now, but the rape occurred before you were moved from the
9 bedroom to the bathroom?

10 A. No. They raped me. It's after they raped me they took me
11 to the bathroom.

12 Q. And the rape occurred before Patrick came into the
13 apartment with the food?

14 A. Yes. The rape occurred before Patrick came upstairs.

15 Q. And it occurred before you made that first call to Patrick?

16 A. The first call I made to Patrick I came, gave them a wrong
17 number so I didn't get Patrick. The second time is, it's after
18 they raped me that I called Patrick.

19 Q. And that's when he came and left some money downstairs?

20 A. Yes.

21 Q. And then you spoke with him again after that?

22 A. Well --

23 Q. And had him come back?

24 A. I spoke to him the same time he left the money and he told
25 me that he wasn't coming but he would come the following day

E9AAADEL7

Adams - Cross

1 cause he's going down Manhattan and when he finished he's going
2 to come up there. After that was I guess the next day.

3 Q. So the rape occurred at least before those two
4 conversations with Patrick?

5 A. The rape occurred after they raped me and that's when I
6 called Patrick because at that point I didn't want to call
7 Patrick cause I don't know what the plan was cause I thought
8 when he come they are going to kill me with Patrick but it's
9 after they raped me was when I gave them the right, tell them
10 the name the phone is at Patrick James and the number. And
11 when they called Patrick and I told Patrick that I need the
12 money to go to Rite Aid to pick up my prescription which he
13 didn't come upstairs he left, he told me that he left it in the
14 windshield wiper.

15 THE COURT: Mr. Pittell, we are going to end in about
16 three minutes just to give you a sense of timing.

17 MR. PITTELL: OK.

18 Q. You said that you had come home from playing bingo that
19 night?

20 A. Yes.

21 Q. And you were playing with the mother of a girl named Lisa
22 Hylton?

23 A. Yes.

24 Q. And is that the same Lisa Hylton who was involved in the
25 robbery in this case?

E9AAADEL7

Adams - Cross

1 A. Yes.

2 Q. And you had indicated that Patrick was, he got his drugs
3 from California?

4 A. Yes.

5 Q. And did he shortly before that Labor Day weekend get a
6 shipment of drugs?

7 A. I don't know.

8 Q. So you stopped knowing about his drug shipments at some
9 point?

10 A. I don't know about his drug shipments. I know that he goes
11 to California. I don't know when it comes or you know so cause
12 I am not involved in selling drugs. I just deal with the drugs
13 dealer. I don't sell it.

14 Q. Now, the Patrick has been robbed before of drugs; is that
15 correct?

16 A. Yes.

17 Q. How many times is that?

18 A. Couple times.

19 Q. And were you living with him during any of those other
20 robberies?

21 A. Yes.

22 Q. And when you say a couple times, is it two or three?

23 A. Like four.

24 Q. Sorry?

25 A. Like four times.

E9AAADEL7

Adams - Cross

1 Q. Four times?

2 A. Yeah.

3 Q. And one time occurred before you moved to the apartment on
4 Magenta Street; is that correct?

5 A. Yes.

6 Q. And it occurred while you were living in another apartment
7 in the Bronx?

8 A. Yes.

9 Q. And you were living with Patrick James?

10 A. Yes.

11 Q. And you have a daughter named Crystal?

12 A. Yes.

13 Q. And isn't it true that your daughter, Crystal, came over
14 with tow people and stole some drugs from the apartment?

15 A. Yes.

16 Q. And one of those who people was Lisa Hylton?

17 A. Yes.

18 Q. And were you home when that happened?

19 A. Yes.

20 Q. And your daughter and the two other people they had guns
21 and knives; is that correct?

22 A. Not my daughter. Lisa and the guy.

23 Q. All right. But your daughter was with Lisa an the guy?

24 A. Yes.

25 Q. All right. And money and drugs were stolen; is that

E9AAADEL7

Adams - Cross

1 correct?

2 A. Yes.

3 Q. Now, another time --

4 THE COURT: Mr. Pittell, do you have much more of
5 this? We're about --

6 MR. PITTELL: This is a good time to stop.

7 THE COURT: All right. Let's do that.

8 Ladies and, gentlemen, we'll end for this afternoon.
9 We'll pick up tomorrow morning at 9:30 and I just want to
10 remind you not to talk to anybody at all about this case.
11 Thank you.

12 (Jury not present)

13 THE COURT: All right. Ms. Adams, you may step down
14 and we'll see tomorrow morning just a few minutes before 9:30.

15 Ladies and gentlemen, let's all be seated to see if
16 we've got any housekeeping.

17 (Witness not present)

18 THE COURT: All right. There were two objections that
19 I'll just briefly go over one. There was a point when
20 Ms. Adams stated or testifying that she thought that they would
21 kill her. Mr. Pittell, you objected. I couldn't figure out
22 what an appropriate objection would be. What was the nature of
23 your objection?

24 MR. PITTELL: Judge, I couldn't hear what you said.

25 THE COURT: She testified that she thought they were

E9AAADEL7

Adams - Cross

1 going to kill her and you objected. It's possible it was for
2 dramatic affect to interrupt testimony but I couldn't figure
3 out what an appropriate objection would have been right there.

4 MR. PITTELL: I thought there may have been some
5 reference to people saying something.

6 THE COURT: That's the next one.

7 MR. PITTELL: I can't recall.

8 THE COURT: OK. The second one was at one point she
9 said somebody was -- she was talking about what Patrick had
10 said at one point and you objected and I thought that you were
11 making a hearsay objection but it wasn't for the truth. It was
12 for the statement and the fact that he had said it. That I
13 think it was that his cousin had the money or something like
14 that. I mean it was a statement along those lines. So it's
15 irrelevant whether or not the cousin, in fact, had the money or
16 he is just saying the cousin had the money was just for the
17 fact that it was said. That's why I ruled as I did.

18 Is there anything that you folks would like to raise?

19 How much more do you have, Mr. Pittell? Give me a
20 sense.

21 MR. PITTELL: Probably 15 minutes, 20 minutes.

22 THE COURT: Is it the government's intention still to
23 call Patrick James after that?

24 MR. POSCABLO: It is, your Honor.

25 THE COURT: All right, then.

E9AAADEL7

Adams - Cross

1 MR. POSCABLO: Then Andrew Brandt, Matthew Fleming,
2 Ellis Deloren. We that will take us through the day and then
3 our last witness will be Special Agent John Reynolds.

4 THE COURT: How about Donald Ford?

5 MR. POSCABLO: Judge, we haven't heard from him and at
6 this point we may not call him.

7 THE COURT: He is the fellow who got injured.

8 MR. POSCABLO: He. Is I think the facts are in the
9 record that we need.

10 THE COURT: OK. All right. So that will take us
11 through the day on Thursday. So either end Thursday or Monday.

12 MR. POSCABLO: That's right, your Honor.

13 THE COURT: All right. So then that would be,
14 Mr. Pittell, you picking up on Monday and so you would proceed.
15 Do you have any sense as to the folks that you've got, if any
16 of them are particularly long witnesses? You've got the three
17 Noisettes, Bell, Thomas Rosenbaum and Ryan, if you know of if
18 any of them are off right now, off the list?

19 MR. PITTELL: No. They're all on the list now. If I
20 had to gauge which one would be the longest, probably, Ryan.

21 THE COURT: Is that the DNA expert?

22 MR. PITTELL: Yeah. I imagine the government will
23 have a question or two for her.

24 THE COURT: All right. And, approximately, what do
25 you have any idea what order you are thinking of calling?

E9AAADEL7

Adams - Cross

1 MR. PITTELL: Well, I am going to have Ms. Ryan come
2 this weekend. So I'll have her here on Monday.

3 THE COURT: Well, sounds like you can get to her on
4 Monday it's very likely if you want to because it sounds like
5 the government's likely to rest on Monday. If I've got the
6 timing mapped out.

7 MR. PITTELL: Yeah. One of Noisettes is from Florida.
8 The marshals are flying him up. I am going to have to call him
9 after the other ones.

10 THE COURT: All right. So you'll work it out. But
11 are the Noisettes are they short or long or I mean are they
12 half hour witnesses? Are they 15 minutes witnesses? Are they
13 hour witnesses?

14 MR. PITTELL: I think one will be an hour direct. The
15 other will be shorter.

16 THE COURT: All right. Let's see. How about Bell?
17 How long is bell?

18 MR. PITTELL: I am trying to map out.

19 THE COURT: Raheem Bell.

20 MR. PITTELL: He is one of the witnesses to be short
21 also.

22 THE COURT: If these folks who are going to say he was
23 here with me at the following times I mean I can't tell this is
24 going to go on very long.

25 MR. PITTELL: The first one I call is going to set the

E9AAADEL7

Adams - Cross

1 stage. I'm not going to redo it again.

2 THE COURT: All right.

3 MR. PITTELL: I mean unless it becomes a bone of
4 contention but --

5 THE COURT: All right. So I think there's some
6 possibility that you'd be done with the witnesses on your list
7 at the end of the day Tuesday.

8 MR. PITTELL: Yeah, I would think so.

9 THE COURT: All right now, so we will need to discuss
10 maybe end of the day tomorrow your current views on whether or
11 not you think you are likely to have Mr. Delva, whether he's
12 likely to choose to testify or not.

13 Mr. Delva, it's your decision. You understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: So I am not going to hold you to that.
16 But I do want to get a sense of timing because if we're at
17 Wednesday Thursday I need to know whether I've got a clear part
18 of Friday because right now I don't have us sitting on Friday
19 as you know but the charge itself is going to take over two
20 hours so that's a chunk of time right there. And of course
21 there's closings which will take some time. So we are going to
22 spend the better part of the day between closings and charge.
23 So if that's all Wednesday as one thing, then we're into
24 Thursday for deliberations. But maybe that we don't get to
25 charge and closings until Thursday in which case I'd rather if

E9AAADEL7

Adams - Cross

1 we have them charged and we close to have them deliberate. I
2 don't want them to take the whole weekend and hence my desire
3 to. I am not going to ask you right now and you can go back.

4 MR. PITTELL: I don't mean to interrupt but I could
5 tell you right now my answer tomorrow at this time is going to
6 be the same that it is, I just don know.

7 THE COURT: All right. Look, I am only asking and I
8 know you are straight shooter. So I am only asking for your
9 best view at this point in time. If you don't have one I am
10 not asking you to commit to something you don't know.

11 MR. PITTELL: If I do I'll let you know.

12 THE COURT: All right. So be it. We'll just deal
13 with it as it comes.

14 Anything that you folks would like to raise?

15 (Continued on next page)

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25

E9a1del8

1 MS. GERACI: Your Honor, just with respect to the
2 defendant's proposed medical expert, not the DNA person but
3 Dr. Rosenbaum, the government renews its objection to calling
4 her as a witness.

5 THE COURT: Well, maybe we'll deal with this tomorrow,
6 where you folks can decide and Mr. Pittell can assess what the
7 medical records I think would be and what definitions at this
8 point she needs to give. It seems like, from Mr. Accilien's
9 testimony, we had an awful lot on the schizophrenia, and I
10 think you've inquired a great deal into matters which may go to
11 the jury assessment of him as a witness in that regard. But
12 why don't I get a proffer from you tomorrow, Mr. Pittell. I
13 think that at least we can join issue on. If there's nothing
14 for her to do, there's nothing for her to do. If there is, we
15 should probably all start grappling with it in very specific
16 terms.

17 Anything else?

18 MR. POSCABLO: Not from the government, your Honor.

19 THE COURT: Mr. Pittell, from your side?

20 MR. PITTELL: No.

21 THE COURT: All right. We've got jury instructions.
22 You folks have that. You've got the Word file and we'll be
23 dealing with those tomorrow morning. We'll start at 9 on
24 those. I do have a matter -- hold on one second.

25 We're adjourned for the evening.

E9a1del8

1 MR. POSCABLO: Good evening, Judge.

2 MR. PITTELL: Actually, I just have one other thing
3 about the jury instructions. You had indicated that you had
4 made some variations from the one we submitted.

5 THE COURT: Let's put it this way. I started with
6 Serrano and you folks did sort of and then you didn't, so you
7 can't run a track change against that and Serrano. Put it that
8 way. Nor can you run a track change against that and your
9 version. There's not going to be a substitute for reading it
10 all yourself. Because, for reasons known only unto you folks,
11 you seem to vary from the Serrano charge for reasons that were
12 unclear to me. It was more stylistic, and I sort of like my
13 own. And because I've spent a lot of time wordsmithing these
14 down to be comprehensible to mere, you know, mortals, hence my
15 attachment to my wording.

16 MR. PITTELL: So is this more akin to Serrano.

17 THE COURT: That's more akin to Serrano than anything
18 else. But there are some charges that Serrano didn't have.
19 There were several charges that were just not relevant to him.

20 MR. PITTELL: Right.

21 THE COURT: Kidnapping.

22 MR. PITTELL: But just like the definition of
23 conspiracy.

24 THE COURT: That's almost verbatim.

25 MR. PITTELL: Okay.

E9a1del8

1 THE COURT: In fact, I think what we can do, and I
2 don't mind doing this, is why don't we send them the version we
3 have which has got the -- I always have two versions, of
4 course, right? You would expect that I would. One is
5 footnoted to where it's all coming from and the second is the
6 version that you get. We'll give you the version that's
7 footnoted to where it's all coming from, but I caution you that
8 you need to read it all yourself. But that will be an aid to
9 you. So don't rely on it exclusively, but you can tell that
10 it's in good faith, and if it says Serrano verbatim, that's
11 where I believed I got it. If this is you folks offered
12 something and I've taken it from you or from the following
13 Second Circuit case, that's all in the footnote. So we'll give
14 you that version as well.

15 I should lastly say that my practice is to post to the
16 docket at the conclusion, after the jury's charged, I'll put in
17 an order with every version of the instructions that I have
18 given you so that it's clear for the record forever and ever
19 what pages we're talking about when we talk about changes
20 during the charge and exactly what language is on that page at
21 that time. All right?

22 ALL COUNSEL: Thank you, Judge.

23 THE COURT: We're adjourned.

24 THE DEPUTY CLERK: All rise.

25 (Adjourned to September 11, 2014, at 9:00 a.m.)

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